

(b)(6)

Col AF/JA

From: (b)(6) MAJ, DoD OGC
Sent: Tuesday, March 09, 2004 4:57 PM
To: (b)(6) Col AF/JA

Sir

Don't know if you remember that we finally "cracked the code" with respect to getting access to some of the Army Tiger Team's materials after much acrimony and debate.

I now have access to a few CDs worth of material - thought you would be interested in this particular gem - I find it highly ironic...



MC-First Cases_.doc

No more emails today - I promise...

(b)(6)

Major, USAF

Department of Defense, Office of the General Counsel
Office of Military Commissions, Prosecution
1931 Jefferson Davis Highway
Suite 532, Arlington, VA 22202
Phone: (b)(6)
Fax: (b)(6)

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(b)(6) Col AF/JA

From: (b)(6) MAJ, DoD OGC
Sent: Tuesday, March 09, 2004 2:06
To: (b)(6) Col AF/JA
Subject: FW: my departure

Sir

You know the only reason you are getting all these is that I told you I was sure I could keep the emails down to one a day or so...

v/r

(b)(6)

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

From: (b)(6) CPT, DoD OGC
Sent: Tuesday, March 09, 2004 14:00
To: (b)(6) (b)(6) COL, DoD OGC
Cc: (b)(6) CAPT, DoD OGC
Subject: my departure

Sir,

I recently spoke with CAPT (b)(6) regarding the upcoming (11 Apr 04) expiration of my orders. As I told her, am asking that the Air Force assign me to an alternate unit effective 12 Apr 04.

I know you are personally aware of my many concerns regarding our execution of the mission, organizational integrity and functioning as a team. It is those concerns that form the basis for my request for reassignment. I don't feel I can best serve the United States in this environment.

(b)(6)

(b)(6) Col AF/JA

From: (b)(6) MAJ, DoD OGC
Sent: Monday, March 08, 2004 7:46 AM
To: (b)(6) Col AF/JA

Sir,

I will try to keep the emails down to a dull roar this week, but a few concerns that I couldn't get into Friday night.

1. The Marine O-5s told me that their legal advisor to the Commandant has emailed them and requested to know "why the Air Force has a problem with the Marines and why the AF is saying the Marines are screwed up." Sounds like somebody is casting this as an interservice namecalling event, but on our peon level, I believe the Marines are attributing it to (b)(6) and I as being responsible for the original leaks that led to questions by their people.
2. I went ahead and confronted (b)(6) about opening his big mouth with Cdr (b)(6) was extremely frightened (I think because he thought I would rat him out to the AF). He told me that it was (b)(6) that had initiated the contact and that (b)(6) had then asked him what his (b)(6) opinion was of (b)(6). I think in part to justify his conversation with (b)(6) told me that he had heard from "other people" that there were problems with (b)(6) and he related to me that he had heard that (b)(6) had been disrespectful to (b)(6) had walked out on him and then been counseled for his conduct. This is the BS issue that I told you about some weeks back. While I realize that the AF would think this issue is complete nonsense, I worry about it because it is clear that our opponents here cannot find a means of attacking (b)(6) on the merits so they are attempting to run him down through other means. You know how such issues can have a life of their own and no one is quelling this one. Col (b)(6) was present for this alleged disrespectful behavior and didn't say a word. From talking with (b)(6) I think it is particularly interesting that (b)(6) actually encouraged (b)(6) to chastise (b)(6). So (b)(6) is really encouraging this environment and this is now the fourth or fifth person I have heard relate this story about (b)(6) behavior.
3. I talked with our new deputy Navy Capt (b)(6) - she was told 30 min before she was appointed the deputy that she would be the new deputy, but she was not told why (other than a statement that (b)(6) needed to be able to focus on his case). There was absolutely no acknowledgment either to her or to the group as to why we really needed a new deputy. The (b)(6) supporters nevertheless see this as a slight of Cdr (b)(6) and they blame us.

On the good side, I did get a pretty good parking spot this morning.

(b)(6) Major, USAF

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(b)(6)

Col AF/JA

From: (b)(6) MAJ, DoD OGC
Sent: Monday, March 01, 2004 5:41 PM
To: (b)(6) Col AF/JA
Cc: (b)(6) CPT, DoD OGC
Subject: Lunch at the Army Navy Club

Sir

Followup conversation with BG Hemmingway today during the trip over and then an hour long lunch at the Army Navy club. He emphasized to me that this was supposed to be "away from prying eyes," which I took to mean that Col (b)(6) and Cdr (b)(6) weren't supposed to know about it.

1. He clearly believed there was a lapse of security and he was very interested in finding out who had talked to TJAG. In fact, his first comment was "someone has obviously been talking to TJAG's office" or words to that effect. I told him that it wasn't necessarily someone going to TJAG - that the office had made a relatively poor showing during the TJAG briefing that may have raised some concerns - while that may have been at least partially a fib, didn't want to rat anyone out either.

2. He also told me that he had to brief Mr (b)(6) in preparation for a mtg w/ the SECDEF, TJAG, Ms (b)(6) and Mr (b)(6) - said he needed to know if there were any problems. I laid it out for him in great detail, but on at least on some points he was fairly unreceptive - particularly as it related to quality of evidence in our possession and proof problems.

3. He clearly had an agenda of attempting to validate the theory of liability. He claimed that TJAG has been talking to the other TJAGs about the conspiracy theory of liability and expressed concerns that this just wouldn't work. BG Hemmingway stated that he had run the charge sheet by (b)(6) and (b)(6) and that both had made positive comments about the charge sheet. My efforts to try to explain to him the difference between the possibility of proving the case in theory and proving the case in fact with these fairly low level actors were unsuccessful. The key problem here is that (b)(6) don't have access to the actual evidence in the first few cases and likely don't realize the problems attendant in proving up a vast conspiracy by a compartmentalized and fragmented organization - their perspective is the war crimes tribunal prosecutions where there are widespread atrocities openly committed by organized groups known to a significant number of witnesses and the offenders are physically present at the scene (aka the Serbian Army).

4. He was receptive as to the management problems and the total failure of the management during Cdr (b)(6) solo tenure. When I expressed the lack of candor (or outright dishonesty) exhibited by the Chief and Deputy, he seemed at a loss as to how to deal with it. I also emphasized that management issues aside, these horses weren't going to be able to get the job done on the first 2 cases. He clearly agreed that this was a problem, but stated that it would be impossible at this stage to remove the lead counsels (at least (b)(6)).

5. He told me that he knew (b)(6) was planning on leaving and wondered if she was one of the ones complaining. I avoided talking about what I knew about her departure, but suggested that she had witnessed firsthand many of the case preparation problems and that she was frustrated by the dishonesty and double dealing exhibited by Col (b)(6) in addressing the problems - particularly on Hamden (the driver case).

6. He was also not very receptive to the appearance of fairness problems. In particular, he doesn't seem to understand why his designation as the deputy appointing authority is going to be viewed unfavorably. I urged him that the only way to fix any of the appearance problems would be for BG Hemmingway to recuse himself from the first few cases and bring MG Altenberg in to review the charges and case files and make his own independent determination, but it seems clear that BG Hemmingway doesn't think this can happen.

7. BG Hemmingway seemed very concerned with internal personnel issues and although I repeatedly tried to broach the topic, did not seem to want to talk about the big picture items like the problems with mission prioritization (i.e. intel over everything). I reengaged with him this afternoon via email regarding lack of command authority and inability to direct movement or compliance from our "supporting" agencies.

In sum, BG Hemmingway seemed floored by the depth of the problems and did not exhibit a willingness or perhaps the ability to address deepseated issues. My concern is that he feels powerless to address the systemic problems and is seeking ways to make cosmetic fixes.

As usual, we remain at your disposal should you need any further info.

v/r

(b)(6)
[Redacted]

Major, USAF

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(b)(6)

Col AF/JA

From: (b)(6) MAJ, DoD OGC
Sent: Friday, February 27, 2004 9:32 AM
To: (b)(6) Col AF/JA



OMC Reorg Paper.doc



OMC Reorg
Powerpoint.ppt

Hey sir,

These are some notions I have been fooling with for some time - you have a paper copy of the first document, but the one included here has been revised and includes some recommendations at the end

Don't know if it is useful to you or not, but perhaps at least a memory jogger.

I could do a lot better with the powerpoint if I understood what the intel relationship is, but I really can't quite figure it out. The big thing I'm trying to show there is that a purple commander has the ability to prioritize missions and resolve conflicts where a DoD level agency does not the same ability without having to run to the SECDEF on a regular basis.

v/r

(b)(6)

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(b)(6)

LtCol, DoD-OGC

From: (b)(6) LtCol, DoD-OGC
Sent: Thursday, February 26, 2004 12:11 PM
To: (b)(6)
Subject: RE: FBIreport of Detainee Abuse

(b)(6)

I think you're referring to my phone call to (b)(6) yesterday. Basically, two of our prosecutors heard a story from an FBI agent (JTTF NY agent (b)(6)) where he confided to them over drinks that he saw some troubling things while serving in Bagram in the Dec 01/Jan 02 timeframe I believe.

Keep in mind that I'm relating what (b)(6) and (b)(6) told me what (b)(6) said while they were at a restaurant having drinks, but this basically is what I know of the story. (b)(6) was at the end of an in-processing line; he was taking pictures of the detainees for the FBI. After the first 30 or so detainees, (b)(6) started observing that the detainees were in more pain, and some of them had feces running down their legs. On one occasion, (b)(6) walked into a room adjacent to where he took pictures and saw an individual in Army BDUs w/ a finger or fingers in a detainees' rectum. The individual said something like, "Take my picture." (b)(6) of course, declined to do this and thought it odd. I'm not sure how this came out, but somehow (b)(6) said something like, "you're the doctor, aren't you?", and the guy basically said no (although maybe he was a medic or corpsman, I don't know). Next to the person was a bucket of vaseline w/ nasty feces and maybe blood in it, which doesn't sound very medical to me. The guy eventually figured out that he'd been talking to an FBI agent and disappeared.

(b)(6) and (b)(6) didn't ask any questions, but over time, especially (b)(6) has become concerned that this information should be reported in case an offense has been committed. That's why I called (b)(6). Obviously, you need to do the right thing with this info, whatever you determine that to be, but if it's possible, we'd like to protect (b)(6) and (b)(6) confidence in this (and (b)(6) for that matter), so if there's a way to handle this in a discreet way, that would be appreciated. Also, would appreciate it if you could keep me in the loop as to if and how this info is used.

Thanks, and give a call if you wish to discuss further.

r/

(b)(6)

LtCol (b)(6) USMC
Prosecutor, DoD Office of Military Commissions
(b)(6)

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

From: (b)(6)
Sent: Thursday, February 26, 2004 6:09 AM
To: (b)(6) (E-mail)
Subject: FBIreport of Detainee Abuse

(b)(6) - Can you resend me the email you sent while I was away on the FBI reported detainee abuse in Afghanistan? Thanks

(b)(6)

Deputy Special Agent in Charge/Chief of Investigations
DOD Criminal Investigations Task Force
Office - (b)(6)
Cell -

(b)(6) (SIPR)
(b)(6) NIPR)

LETTS 5 Apr-05

(b)(6)

LtCol, DoD OGC

From: (b)(6) LtCol, DoD OGC
Sent: Monday, March 22, 2004 13:08
To: (b)(6) MAJ, DoD OGC
Subject: RE: Col (b)(6) ~~Eyes Only~~

(b)(6)

I've done as you asked (read the below carefully), and took quite a bit of time digesting all of this over the weekend.

The below does help add some context, and I appreciate your effort to reach out to me and try to explain your comments. However, the thoughtful, temperate nature of the below e-mail is in stark contrast to your vitriolic e-mail that has so hurt many of us and this organization as a whole. I have always worked hard, I have always tried to listen and to be honest, and I don't feel that I deserved that. I can only take it personally when you say relatively nice things to my face, but behind my back say that you hold me in "utter contempt." Or when you say to my face that you have no problem with me, it's not about me, but behind my back lobby for me to be fired. And maybe I'm wrong, but I presume that Capt (b)(6) consulted you in writing his e-mail. Read it for yourself. I say the same thing back at you – if you think that your e-mails were temperate, reasonable, or warranted, then you and I don't see the same world at all.

After your "shameful" speech, I really felt the need to say something to you, because I firmly believe that your e-mail, as well as (b)(6) was what were shameful. COL (b)(6) advising the rest of us of the serious allegations you two have made against us, it seems to me, pales in comparison. I just don't know when or why you and Capt (b)(6) made the leap from expressing frustrations and systemic concerns to conducting personal attacks and making half-baked allegations. Surely this was not the right way to handle this.

LtCol (b)(6)

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

From: (b)(6) MAJ, DoD OGC
Sent: Wednesday, March 17, 2004 07:48
To: (b)(6) LtCol, DoD OGC
Subject: FW: Col (b)(6) ~~Eyes Only~~

I know that you are angry with me and I know you disagree with the vast majority of what I'm doing, but it is important for me to let you know that I really tried to avoid it coming to something like this.

Maybe you don't believe me, but I would ask you to carefully look at this email and note when it was sent (our reorganization happened the next day).

(b)(6) already has a copy, but I wanted you to have it as well.

If you can honestly say that you disagree with any part of this email, then it is clear that we just don't see the same world at all.

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

From: (b)(6) (b)(6) COL, DoD OGC
Sent: Thursday, December 18, 2003 19:32
To: (b)(6) MAJ, DoD OGC
Subject: RE: Col (b)(6) ~~Eyes Only~~

(b)(6)

Thank you for taking the time to write this email to me.

You have obviously done a lot of thinking about it.

I want you to come to the Pentagon tomorrow to discuss it with me---give me a call in the morning and we will set up a time to meet.

LETB 5 Apr 04

COL (b)(6)

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

From: (b)(6) MAJ, DoD OGC
Sent: Thursday, December 18, 2003 17:45
To: (b)(6) (b)(6) COL, DoD OGC
Subject: Col (b)(6) ~~Eyes Only~~

Risk Assessment – Col (b)(6) ~~Eyes Only~~

Sir,

I consider this document to be a protected disclosure to you as my military supervisor. I don't want to be placed in the situation where this document is reviewed with Commander [] – not because I have a problem with Commander [] but because I know he will perceive it as an attack on his leadership when it is absolutely not that at all. I have great respect for the Commander, but I have certain concerns that are very troubling to me and I don't think that the Commander is in a position to resolve them. If the Commander is made aware of this document, you can consider this to be my request for reassignment because my position on the team will be untenable. I wouldn't be sending you this document, but for the fact that these concerns are keeping me up at night and I am convinced that we are ineffectively handling our mission here.

I put this in writing in the hopes that I could effectively articulate my concerns. I realize that these issues are not my call and I realize that I get no vote. On the other hand, I feel strongly enough about these things that I am willing to vote with my feet. So here goes:

I understand the “if we build it they will come” philosophy of trying to get a case to trial, but I am extremely concerned that our lack of a common understanding of a long range strategy (or the logistical requirements to carry it out) creates a significant potential for failure either in perception or in fact

Despite what anyone says, this is complex litigation – when you are dealing with classification of information, interagency cooperation, multiple jurisdiction motions, multiple in limine/suppression motions, multiple defendants, you are talking about complex litigation. I also believe that I have relatively good credentials to say this is complex litigation - I am one of the few people in this office who can say they have been part of complex litigation, used alternatives to testimony on a significant scale, managed documents on a significant scale, etc, etc- when I say we are at 25% of what we need, that's not just a pie in the sky number – in fact, I think it is a fairly conservative number given the vast number of first impression issues we will be dealing with.

- but we are not managing these cases as a complex litigation effort - we do not have a corporate strategy with respect to discovery, litigation support, case investigation/perfection and that's what we need to be doing *in addition* to preparing for our first couple of cases.

I see 8 specific interrelated problems:

1. Lack of overall management, strategy or direction – This is not a personal attack by any means, but I believe that the current team organization is untenable and is likely to lead to embarrassing results. We have a situation where the presumptive trial lead is not only managing the very important job of assembling the first litigated case, he is also attempting to accomplish the at least equally critical job of managing a major historic multi-case litigation effort involving 10 lawyers and potentially 50-100 cases with significant discovery issues and unprecedented

legal, political and media issues. This is an impossible set of responsibilities for any one person. At the same time, it has the potential to lead to distorted strategic decisions – where our manager has a “one case, let’s get it to trial,” focus, it is very hard for him to view the long position.

What we really need is someone with complex litigation *team* management experience who can manage cases, keep abreast of the long term strategy, and who manages all of us on a daily basis to ensure maximum utilization – we aren’t getting that. I understand why you have to be where you are, but we need another one of you to be over here managing the Prosecution and we need our Commander working full tilt on his case (because I presume that he couldn’t give up his position on the first litigated case to be the full time manager only).

As a practical matter, I also think we really need O-6 type power to stand on CITF, other agencies and get things moving because that’s not happening at near the pace it needs to be happening and it is taking our team chiefs out of case preparation.

2. Lack of understanding of mission/priorities -- the whole ballgame here is proving the existence of the Al Qaida criminal enterprise and the case for individual accountability as a participant or as an aider/abettor – I would bet a paycheck that if you individually questioned each member of the team, you would hear significantly different understandings of what evidence we need to present, what witnesses we need to use, what documents we need to use, how much of that stuff we have, how much we still need or even what the theory of criminal liability is.

In my opinion, we do not have a sufficient understanding that this is the focus and we do not have sufficient resources devoted to what amounts to 80% of the case. The idea that each team chief is going to decide what to put on for this component of the case borders on ludicrous – this HAS to be the substantially the same for at least the first few rounds of cases and it is a waste of resources for anyone to be preparing this part of the case separately. Moreover, this is going to be a fairly substantial evidentiary presentation - many documents, multiple witnesses - We should have at least 3-4 people working as a team on this part of the case -- regardless of which case ends up being the first one, this part has to be the same- -

3. Lack of communication/ understanding of the ongoing cases and lack of crossflow of information - we are working in a vacuum - there is little or no crossflow of information - I have no idea what the team chiefs are working on on a given day- teams have little or no idea what other teams are working on - it's ludicrous that everyone in this office isn't substantially familiar with the first 3-4 cases, what evidence we have, what our LIMFACs are, etc. Most of the team has no idea as to what kinds of big picture evidence has been requested, what we still need, what we intend to use it for, etc.

4. Lack of CITF/FBI/Other Agency interaction/cooperation/support – every time I make an inquiry related to CITF efforts, I am dismayed at the lack of focus/lack of understanding/lack of cooperation – we don’t know what they have, they don’t know what they have, we don’t know what they are doing, and they don’t know what we want them to do. I don’t believe that CITF understands what we are actually trying to prove, what we need from them, what we can actually use in trial, etc. I also don’t believe that CITF could possibly ramp up to prepare more than a few cases for trial. The same is true for FBI, DOJ et al - the fact that we don’t know what other agencies might have on our people (incriminating or exculpatory) only underscores this point. I think the public or our management for that matter would be shocked at the lack of help we are getting from other government agencies or our own investigative agency and I doubt that our relatively meager progress with these groups is going to be sufficient to get cases moving in an acceptable manner. We clearly need a substantial DOJ and FBI and Intel and OGA liason effort

to take advantage of the substantial resources they have available and I don't think we are making any real progress on this either.

5. Discovery Plan or lack thereof

Some people believe that the actual discovery that we will have to produce may be fairly limited, but I don't believe we are going into this with a realistic expectation of how much time discovery battles take, how big they can get, what kind of manning, equipment and resources you might need even when things go your way. Like with the theory of criminal liability, this is an issue that affects every case and we don't have an overall plan or sufficient resources devoted to this. This is probably a full time job even now for an attorney, a paralegal and a few contractors – if we get going with 1 or more litigated cases, this is a full time effort for 2-3 attorneys and a significant number of paralegals, contractors, translators, etc.

In particular, we don't have sufficient resources devoted to establishing and implementing NOW an overall plan for document collection, validation, management, storage, copying, etc etc – and that's just documents...

6. Lack of litigation support

a. Paralegal/Admin Support – I don't believe that we have any idea how much work this will be if we get a well-planned defense attack on even one case. We are not staffed to address such an attack. For every litigated case that we plan to roll out, we will need a dedicated admin person just for that case, maybe more like 2-3.

b. No translator on staff – we are dealing with at least 2 difficult languages and probably more and we still have not been able to secure even one translator.

c. Intel Community Support – we are going to have major classification and access to info issues, potentially on a massive scale. We don't appear to be getting sufficient cooperation from the intel community and we lack sufficient resources on our staff to do anything about that. Any major litigation effort dealing with even a small number of these issues would have a dedicated staff (intel officers, security classification experts, cleared analysts) to work that piece.

d. Investigative Support to perfect cases – every war crimes tribunal and every significant fed ct terrorist prosecution has dedicated investigators to perfect the case for trial – CITF is not filling this bill and the fact that we aren't effectively raising this issue is going to become readily apparent in the next round of cases if it doesn't become apparent in our first 4.

7. Problem of Outsider Status – There is a severe void between the people who have been here for a year and us newcomers. The old-timers had to labor under the very unreasonable conditions of having a mandate to prepare cases, but insufficient access to investigative resources or evidence. As they have worked so hard over a year to get to this point, in my humble opinion, they have lost some of the objectivity they might normally have to realistically assess the cases and properly address the various shortcomings I have previously detailed. Because they have labored under such unreasonable conditions for so long, they see the fairly limited progress that has been made in evidence collection, document production etc as a vast step forward. Some of us newcomers see the process as still woefully inadequate and unlikely to be remedied in time for trial. One consequence of this phenomena is that the original members of the team see some of the new members of the team as troublemakers because we just don't see much progress and we raise concerns about the limitations that have been placed on us.

The environment has devolved into a “shut up and color” environment. If we were dealing with a base legal office or a UCMJ prosecution team I would have no problem with being told to stay in my lane, “that decision has already been made,” “I'm not interested in your opinion on that,” etc. However we are talking about a case of first impression where no one can really predict the

fall out - if we make mistakes it will have repercussions for our country, our services, our profession and our individual futures so it is absolutely unacceptable that we are told to "stay in our lane." Moreover, many of the decisions that have been made seem to have been predicated on assumptions that are clearly invalid or at least unrealistic (i.e. rough justice).

What this environment does is shut down any discussion - any constructive criticism. I absolutely understand that too many cooks can spoil the stew and even people that ask good questions can suffer from talking too much. But that doesn't excuse the environment we have. My perception is that the staff has divided into 3 camps:

- a. a group that says the train has left the station, we're stuck with what we have, so let's make the best of it and hope we get a case to trial because then things will be better (and don't ask questions because that may derail the train.)
- b. a group that is concerned and/or doesn't understand or agree with what is going on, but has experienced being shot down when they ask questions, so now they don't ask questions and
- c. those few of us who persist in asking questions and are increasingly alienating the rest of the group.

8. Overselling Guilty Pleas, Quick Trials, and Rough Justice

I believe that the vast majority of outsiders have a mistaken impression of the depravity of our defendants and the evidence we have available to prove cases. If these cases ever see the light of day, I think the public will perceive these people as relatively small time guys. I also think the defense will be surprised at how little effort was directed at law enforcement and how little we as prosecutors have to work with. Thus, my evaluation of interest analysis here is that any defense counsel would be crazy to advise his client to plead guilty on a non-death penalty case given the lack of political will, the potential for effective collateral review, and the many controversial issues that can be raised to try the case in the media and on the merits. I also don't want to forget full and fair -- I heard the President say it -- I sincerely believe he means it and I'm fairly certain that none of us really wish to accept anything less for these detainees no matter what kind of scumbags we think they are. But if we can't get moving to resolve these things, there comes a point where the critics are right. These detainees are in US military custody -- so we have certain obligations to uphold our country's honor. Thus, in my view this concept of "rough justice" is very dangerous rhetoric. If people honestly think this is going to be "rough justice:"

- a. I don't want to be a part of anything that people really believe to be rough justice and I doubt many of my colleagues do- we are lawyers and military officers, not vigilantes
- b. We all wear the uniform of the United States of America and in doing so, not only represent our client the United States, but also the legal tradition of the uniformed forces-- rough justice is an unworthy appellation for that tradition.
- c. Rough justice misleads the civilian leadership -- it implies simple, straightforward, quick, without fuss, etc. This is going to be highly contentious, lengthy, burdensome, practice -- the Nuremburg experience and ICTY experience show us that. I can't believe that our client -- the President through his representatives the SECDEF and Deputy SECDEF has been apprised of the fact that each of these trials easily have the potential to be multimonth and maybe each take years

I am also concerned that as the resolve to detain weakens and the confusion as to detainee policy continues, the blame game is going to shift to the OMC prosecutor's office. As other agencies drop their justification for holding detainees or even push for release, increasingly OMC will be on the hot seat to justify detention when we don't have sufficient case development to determine which people will really be commissioned. My perception is that people are bailing out on this policy and we are going to be stuck looking like the bad guy if we can't substantiate the case -- in particular, the idea that we will be making charging decisions not on the culpability of

defendants, but because of pressure from western European governments is really scary.

So what is the bottom line? I don't know how we can possibly be giving the powers-that-be decision quality information when there are clearly unacceptable shortcomings that we know about, but haven't addressed and don't have the ability to address in the near future. The potential tragedy here is that our failure to prepare correctly and/or advise management of the real risks may shatter their already weakened resolve resulting in clearly guilty individuals not being held accountable for their crimes.

Where does that leave me? This isn't some kind of statement for posterity or to cover my ass - I simply have certain professional reservations about how things are going and I'm not sure that I can reconcile these shortcomings. In fact, I am so disappointed in DoD's lack of resolve/ lack of vision here, that I'm not sure that I am sufficiently objective to continue in this job and I don't want to be an obstacle to this process. I don't want to embarrass my service, this office or you, but I don't want to be part of a process that I think is wrongly managed and unlikely to change.

I'm also not so arrogant as to believe that I am central to this process or that everyone needs to agree with me - I realize that I might be the only one who feels this way. Moreover, I haven't talked to my wife yet and I really don't know what she will say as we made major sacrifices to come here. But you should know that when I come back from Christmas leave I may be asking for reassignment. I'm not going to go away whining, but I'm not sure that I can stomach staying. I know this is a lot, but I wanted you to know how I feel before the holidays so there are no surprises when I come back. There are truly no hard feelings on my part, I'm just not sure what I want to do.

v/r

(b)(6)

Major, USAF

Department of Defense, Office of the General Counsel
Office of Military Commissions, Prosecution
1931 Jefferson Davis Highway
Suite 532, Arlington, VA 22202
Phone: (b)(6)
Fax: (b)(6)

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(b)(6)

Col AF/JA

From: (b)(6) MAJ, DoD OGC

Sent: Tuesday, March 16, 2004 7:41 AM

To: (b)(6) Col AF/JA

Subject: FW: Allegations of misconduct and unprofessionalism against Chief

Sir

Just wanted to update you (b)(6) sent the email below out in response to Col (b)(6) missive to the office.

Realize this email has caused a firestorm, but didn't anticipate the reaction to the fact that we emailed (b)(6). We have been emailing him for some time on the myriad of problems around here. To be honest, it was almost the only way to catalog even some of the mass of problems we are facing.

I know MG Fiscus was disappointed in us - while I am sorry about that, we really felt like we had to make a record. That email was in response to a meeting w/ Col (b)(6) where he attempted to gloss over a number of our big "I" word and "E" word concerns and he had Capt (b)(6) sitting there taking notes - a first ever.

Bottom line: didn't see how it benefited (b)(6) at all to forward our emails anywhere, so we didn't assess this as being particularly dangerous - moreover and probably more importantly, everything said in there is clearly true and the vast majority has both been verified by other sources and acknowledged by (b)(6) in previous meetings, conversations, or emails.

(b)(6) is mortified about having embarrassed the TJAG. I can barely get him to focus. I am less embarrassed as I just don't think there are any good answers here - this may not have been the best tactic in the world, but I kind of feel like we are damned if we do, damned if we don't.

v/r

(b)(6)

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

From: (b)(6) CPT, DoD OGC

Sent: Monday, March 15, 2004 13:41

To:

(b)(6)

Cc:

Subject: RE: Allegations of misconduct and unprofessionalism against Chief Prosecutor

Sir,

As you know, I too have seen and been quite troubled by the incidents related by both Maj (b)(6) and Capt (b)(6). Frankly-for my own sanity-I have made a point not to keep a running tally of the incidents that form the basis for my upcoming departure. That being said, the messages below (combined with what I'm about to add) are a pretty good reflection of how I think my "list" would look.

The additional "situations" that come to mind:

1. The Moot Court: I witnessed Maj (b)(6) and Capt (b)(6) being urged to raise only a fraction of the issues they originally forecasted. Essentially, CDR (b)(6) directed them not to mount a zealous defense. It was clear that instead of a genuine vehicle for improving the United States' position in Military Commissions, the moot court was mere window dressing-the goal being to avoid criticism of our case

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preparation or courtroom presentation.

The sages assumed we were a team and that we had all played a role in the preparation of al Bahlul. As you know, that assumption was completely false. CDR (b)(6) wouldn't even let his co-counsel, Capt (b)(6) get a peek into what he was doing. I recall asking (b)(6) (because I was completely ignorant of the on with prosecution cases as "the transfer attorney") why he wasn't playing more of a role in the moot court. He basically said he would be incapable of any greater role because he didn't know anything and CDR (b)(6) had been flying solo for months. I also recall dancing around questions from one sage regarding the facts of the case because I knew she would be mortified if I told her only one guy in the office (the one who was reading his compound, leading questions from a piece of paper the entire time) knew the facts of what we had long thought would be the first litigated case.

Finally, members of the office weren't asked once for our input regarding the outcome of the moot court. Maybe it was for the best, because my honest answer would have been that I was embarrassed. (Please note that I wasn't aware during the moot court that facts were being misrepresented . . . I learned that afterward. I would have been even more embarrassed (and a few other things) had I known.) I was embarrassed that the person you have called "our best litigator" gave an opening with too much detail, too little eye contact, choppy delivery and no apparent theme or theory. I was embarrassed that he didn't know his case well enough to float seamlessly through "fake" witnesses with whom he'd practiced numerous times. And finally, I was embarrassed at his curt, often hostile reaction to what I really thought was very mild criticism. (Frankly, I've seen very junior attorneys at the Air Force's intro-level trial ad course give similar performances and get reduced to tears as a result of instructor critiques; I've taught at that course a couple times, and I can tell you I would not have recommended CDR (b)(6) for future litigation duties, given his courtroom presence.)

2. Allegations of abuse at Bagram: CDR (b)(6) mentioned the allegation to me while I was detailed to Hamdan. His comment was "a couple of drunk FBI agents hardly constitute a prima facie case." I'm sure you recognize the problems with that statement . . .
3. Other comments by CDR (b)(6) I have heard him, on numerous occasions-many of which were in your presence-state that he "only cared about his case." Only once did I hear you clarify that we *all* needed to be concerned about *every* case (I took note because I had been waiting so long for it to happen). It was February. I firmly believe there are a number of things only he knows about that could have quite an impact on military commissions as a whole.

Last fall CDR (b)(6) announced that only those in the ranks of O-5 and above would have access to the SCIF-regardless of their clearance. He did this under the guise that I had left the SCIF unsecured; but real story is that he sent me to get the combination to the dial from (b)(6). Upon returning, I was told to enter the combo on the dial; I did so, but we soon realized that the combo to the sipher lock was not the same as we thought. So CW3 (b)(6) just started to push buttons. Remarkably, after numerous tries, it opened. But the Chief wasn't sure what he had entered. Then CDR (b)(6) came and entered his PIC (I was new to the office and didn't have mine). Then CDR (b)(6) instructed me to just prop the door so that CW3 (b)(6) (an individual he knew only had a ~~Confidential~~ clearance at the time-the rest of us found out later) could get in and out. He pinned the whole thing on me because, before I left for the day, I noticed that the SCIF had been closed but no one signed the card to verify it. Noting that the dial was spun off and the door (to which I did not have the combo) closed, I initialed the card, asked Lt Col (b)(6) to verify, and left. CDR (b)(6) who was awakened because the SCIF alarm sounded in the middle of the night (no PIC had been entered to close it), announced to everyone that we would be getting inspected and trained "because of (b)(6)." He also announced the policy that only O-5 & above would get the codes.

4. Keeping things from the front office: CDR (b)(6) knew that we had been directed to keep the front office apprised of our efforts regarding Hamdan's status on 13224. I believe that, like the Cole video, he has avoided fulfilling this promise in hopes that they'll simply forget. He doesn't want any more evidence from the UK because it might not be in line with what he already has.

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5. Fueling fires of hostility within the office: the environment is clear when things like the following occur:
- Following AF TJAG's visit, you stated in an office meeting that "they clearly had an agenda" and that it must have been prompted by "something they heard from (b)(6) or (b)(6) or (b)(6)". At that it was clear to everyone that those wearing blue uniforms were not to be regarded as part of the team.
 - Mr. (b)(6), during the first few weeks of his assignment here, outlined one of the goals of his TFD briefing as "convince Capt (b)(6)". This clearly implied that (b)(6) instead of an intelligent member of our team, was to be regarded as a troublemaker who only raised points with an eye toward derailing current operations.
 - During a TFAQ meeting, (b)(6) announced that the al Qosi team's 70+ page "proof analysis" had been dubbed a "piece of shit" by someone in the office. LtCol (b)(6) immediately, in front of about ten analysts, attorneys and maybe enlisted, demanded to know who had said that. (b)(6) quipped, "you know." Then there were a number of comments in the room clearly indicating they were talking about (b)(6). I was particularly disturbed, as this was the same day you announced that we needed to "work as a team." At the conclusion of that meeting, there was some discussion about how the al Qosi attorneys were having trouble getting some interview documentation because (b)(6) was making them articulate relevance of the documents. I thought the office view of Capt (b)(6) was reflected by Mr. (b)(6) response that he could "take care of Capt (b)(6)". (Please note as a side issue that (b)(6) "quote" was completely inaccurate.)
6. No "vision." We reorganize constantly. It's almost a joke. By the time somebody gets their feet wet in a particular case or task force, they're detailed to something else. This phenomenon perplexes me, and I can think of no potential motivation for it. But it almost seems like our organizational goal is inefficiency. Additionally, in the case of Hamdan, it certainly appeared that I was removed because I deemed the case "a mess." I thought, in telling you that I would support your decision to remove me, that you had a goal in mind (i.e. detail someone who can fix the case and get it ready without being faced by fire from CDR (b)(6) in the form of "you forget that I'm your boss."). When the person who had been sitting on the case for a year simply got it back (with no potential replacement counsel—except maybe an incoming Navy LT who "respects CDR (b)(6) superiority"), it showed me that our goal here is not to best serve the United States. You told me you knew he was defying your orders. You told me you knew I was in a sticky situation because he was the deputy and had been working the case for a long time, but you expected me to get the case ready. By the time I had read the portions of the case the CDR (b)(6) gave me, I was gone. And I'd bet money the case is in the same shape now as it was back then.
7. Appearance of impropriety: I have felt quite uncomfortable with the numerous references you have made to personal contacts with an individual named (b)(6). I believe this person is a Navy O-6. You and CDR (b)(6) often refer to him as "the Presiding Officer," despite the fact that no PO has yet been chosen by the AA. In response to points raised regarding potential defense challenges, I often hear CDR (b)(6) say one of 2 things: 1. The defense will never think of/do that, or 2. (b)(6) won't let them go there. Discussions like these, in addition to knowledge that you have been sending things like the trial procedure guide to Rolfs for his comments, make me very uncomfortable. Finally, when you say things like "these panels aren't going to acquit," or "the panel members are being carefully chosen" in response to concerns about how certain pieces of evidence will play, it leads me to question whether these proceedings will truly be fair.

(b)(6)

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

From: (b)(6) (b)(6) COL, DoD OGC

Sent: Monday, March 15, 2004 11:29

To:

(b)(6)

Cc: (b)(6)

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Subject: Allegations of misconduct and unprofessionalism against Chief Prosecutor
Importance: High

All:

Please read below.

Capt. (b)(6) has made some serious allegations against me as the Chief Prosecutor---charges that, if true, mandate that I be relieved of my duties.

Among other things, Capt. (b)(6) insists that an "environment of dishonesty, secrecy, and deceit" exists within the entire office.

In an email preceding Capt. (b)(6) you will note that Maj. (b)(6) voices similar views: he states that he is "disgusted" with the "lack of vision" and "lack of integrity" in the office, and has "utter contempt" for many of the judge advocates serving with us.

Bottom line: Both Capt. (b)(6) and Maj. (b)(6) believe that what we are doing is so wrong that they cannot "morally, ethically, or professionally continue to be a part of this process."

I am convinced to the depth of my soul that all of us on the prosecution team are truly dedicated to the mission of the Office of Military Commissions---and that no one on the team has anything but the highest ethical principles. I am also convinced that what we are doing is critical to the Nation's on-going war on terrorism, that what we have done in the past---and will continue to do in the future---is truly the "right" thing, and that the allegations contained in these emails are monstrous lies.

It saddens me greatly that two judge advocates---whom I like very much and for whom I have only the greatest respect and admiration---think otherwise. In fairness to all of you, however, it is important that you read what has been written about me and you.

COL (b)(6)

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

From: (b)(6), CPT, DoD OGC
Sent: Monday, March 15, 2004 07:56
To: (b)(6), (b)(6) COL, DoD OGC
Cc: (b)(6)

Subject: RE: Meeting with Colonel (b)(6) and myself, 4:00 p.m. today, Col (b)(6) office

Sir,

I appreciated the opportunity to meet last Thursday night, as well as the frankness of the discussion. The topics covered and the comments made have been replaying in my mind since we ended the meeting. I have also reviewed Maj (b)(6) comments in his e-mail below, and I agree with them in every respect.

I feel a responsibility to emphasize a few issues. I do not think that our current troubles in the office stem from a clash of personalities. It would be a simple, common, and easily remedied situation to correct if this were true. People could be reassigned or removed.

It is my opinion that our problems are much more fundamental. Our cases are not even close to being adequately investigated or prepared for trial. This has been openly admitted privately within the office. There are many reasons why we find ourselves in this unfortunate and uncomfortable position - the starkest being that we have had little to no leadership or direction for the last eight months. It appears that instead of pausing, conducting an honest appraisal of our current preparation, and formulating an adequate prosecution plan for the future, we have invested substantial time and effort to conceal our

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deficiencies and mislead not only each other, but also those outside our office either directly responsible for, or asked to endorse, our efforts. My fears are not insignificant that the inadequate preparation of the cases and misrepresentation related thereto may constitute dereliction of duty, false official statements, or other criminal conduct.

An environment of secrecy, deceit and dishonesty exists within our office. This environment appears to have been passively allowed to flourish, if it has not been actively encouraged. The examples are many, but a few include:

1. **CDR (b)(6) misrepresentations at the Mock Trial** - CDR (b)(6) made many misrepresentations at the Mock Trial, to include stating that we had no reason to believe that al Bahlul had suffered any mistreatment or torture. When I confronted him immediately after the mock trial with his notes to the contrary, he admitted that he was aware of abuse allegations related specifically to al Bahlul. Interestingly, it was because of Prof. (b)(6) comments at the mock trial that we even began to inquiry into the conditions at the detention camps in AF, which prior to the mock trial had been consciously ignored. Other troubling aspects of the mock trial include, but are not limited to: statements that we would be ready for trial in 3 days, that al Bahlul has maintained from day one that he is a member of AQ, the deliberate and misleading presentation of select statements from al Bahlul, the careful coordination of the schedule to limit meaningful questions, the conscious inclusion of an overwhelming amount of paper in the notebooks, and the refusal to include a proof analysis.

2. **Suppressing FBI Allegations of Abuse at Bagram** - Over dinner and drinks (b)(6) and Lt (b)(6) heard from FBI agents that detainees were being abused at the Bagram detention facility. Lt (b)(6) told (b)(6) after dinner that they couldn't report the allegations because it was told to them "in confidence." (b)(6) told CDR (b)(6), Lt Col (b)(6) and (b)(6) anyway, and all three stated that there was not credible evidence and concluded on their own volition that they should not report the allegation to you or other members of the office. Interestingly, CDR (b)(6) recently suggested the Lt (b)(6) despite his lack of experience and judgment, be sent to review the CID reports of abuse at Bagram.

3. **Refusal to give Mr. (b)(6) the COLE video** - Mr. (b)(6) asked CDR (b)(6) twice for a copy of the COLE video. I heard CDR (b)(6) ask CDR (b)(6) whether she should take a copy of the video over to Mr. (b)(6). CDR (b)(6) told her not to, and that maybe in a few days Mr. (b)(6) would forget that he asked for it.

4. **The disappearance/destruction of evidence** - As I have detailed to you, my copy of CDR (b)(6) notes detailing the 302 in which al Bahlul claims torture and abuse is now missing from my notebook. The 302 can not be located. Additionally, (b)(6) of the FBI related last week that he called and to CDR (b)(6) about the systematic destruction of statements of the detainees, and CDR (b)(6) said that this did not raise any issues.

5. **"I've known about this for a year."** Hamden's name is on the UN 1267 list, and we only learned of it in Dec. When CDR (b)(6) was confronted with this information, he claimed that he had known about it for the last year. No attempt had been made prior to Dec to discover upon what evidence Hamden was added to the list, and we still don't know. If he was aware of this fact, one is left to wonder why no inquiry was made with the State Department. He made the same "I've known about this for a year" claim about the Tiger Team AQ 101 brief, although he has had many of us searching for the information contained within it for months.

6. **CDR (b)(6) misrepresentations at the office overview of his case.** As detailed in a previous e-mail to you, CDR (b)(6) made numerous misrepresentations concerning his case at the office meeting to discuss his case, indicating that he either consciously lied to the office, or does not know the facts of his case after 18 months of working on it.

I have discussed each of these specific examples with you, and you told me that you had taken corrective action to some. For example, in reference to paragraph 2, I asked how I was suppose to trust these attorneys to review documents and highlight exculpatory evidence and you responded that "when the time comes" you would put out very direct guidance. I do not believe that ethical behavior is something that can be directed during selective time periods.

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These examples are well known to the members of this office, yet there has been no public rebuke of the behaviors. Hence, the environment and behaviors continue to flourish. I am left to wonder why at an office meeting we were not told:

"I understand that misrepresentations are being made concerning the facts of our cases. If I find out this happens again, the responsible party is going to be fired."

"I understand that evidence is being withheld from our civilian leadership. If I find out this happens again, someone is going to be fired."

"I understand that allegations of abuse are not being brought to my attention or reported to the appropriate authorities. If I find out this happens again, someone is going to be fired."

"I understand that evidence is being hidden or destroyed. If I find out this happens again, someone is going to be fired."

Even in regards to CDR (b)(6) recent behavior towards Maj (b)(6) and myself, the office was not told the real reason for why he has been removed as the deputy, only further feeding the underlying animosity and indicating that the action was forced upon you and not really justified - If not, surely you would have taken a less conciliatory stance.

You stated in our meeting last week that what else can you do but lead by example.

In regard to this environment of secrecy, deceit and dishonesty, the attorneys in this office appear to merely be following the example that you have set.

A few examples include:

You continue to make statements to the office that you admit in private are not true. With many of the issues listed here, the modus operandi appears to be for you to make a statement at a meeting, pause, and when no one states a disagreement, assume that everyone is in agreement. To the listener, it is clear that the statements are not true, but we are not to correct, disagree, or question you in front of the office. (For example, when I asked you basic questions concerning conspiracy law at an office briefing, CDR (b)(6) called me into his office and told me that my conduct was borderline disrespectful because it put you in an uncomfortable position.)

You have stated for months that we are ready to go immediately with the first four cases. At the same time, e-mails are being sent out admitting that we don't have the evidence to prove the general conspiracy, let alone the specific accused's culpability. In fact, it may be questioned how we are in a better position to prove the general conspiracy today than we were last November at the mock trial. Of course, it should also be noted that we have substantially changed course even since November and now acknowledge that the plan to prove principal liability for TANBOM, KENBOM, COLE and PENTBOM was misguided to say the least.

We are rushing to put 8 more RTBs together for cases that you admit are not even close to being ready to go trial. We are also being pressed to prepare charge sheets, and you have asked that discovery letters go out on these cases. We are led to believe that representations are being made that these cases can be prosecuted in short order, when this simply is not true.

You told the AF generals that we had no indication that al Bahful had been tortured. It was after this statement, which CDR (b)(6) quietly allowed to go uncorrected, that I brought up CDR (b)(6) missing notes to the contrary. You admitted to me that you were aware that al Bahful had made allegations of abuse.

In our meeting with OGA, they told us that the exculpatory information, if it existed, would be in the 10% that we will not get with our agreed upon searches. I again brought up the problem that this presents to us in the car on the way back from the meeting, and you told me that the rules were written in such a way as to not require that we conduct such thorough searches, and that we weren't going to worry about it.

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You state in a morning meeting that al Bahlul has claimed "in every statement" that he was an AQ member. When I told you after the meeting that this was not true, you simply admitted that you hadn't read the statements but were relying on what CDR (b)(6) had told you. As I have detailed in another e-mail, it does not appear that CDR (b)(6) is even aware of how many statements al Bahlul has made, let alone conducted a thorough analysis.

When Maj (b)(6) raises concerns about him advising the AA given the potential appearance of partiality, you advised him not to stop giving advice, but to only give advice orally.

CDR (b)(6) has emphasized at morning meetings, with you in the office, that we do not need to be putting so many of our concerns in e-mails and that we can just come down and talk. Given the disparity between what is said in casual conversation and the statements made by our leadership in e-mails, it is understandable that we have relied more and more on written communications.

You have repeatedly said to the office that the military panel will be handpicked and will not acquit these detainees, and we only needed to worry about building a record for the review panel. In private you have went further and stated that we are really concerned with review by academicians 10 years from now, who will go back and pick the cases apart.

We continue to foster the impression that CITF is responsible for our troubles and lack of evidence, although we have learned in the last few weeks that we haven't even sat down with the case agents to figure out what evidence they have and how they have gathered it. You acknowledged last week that we will not even try to fix the problems with CITF. What is perhaps most disturbing about the lack of by our investigative agents is that it does not appear we have ever adequately explained the deficiencies to the CITF leadership.

Our morning meetings, briefings, and group discussions are short and superficial - It could be argued designed to permit a claim that the office has discussed or debated a certain topic without permitting such meaningful discussions to actually take place. Two prosecutors were scheduled 15 minutes each to go over the facts of their case. Charge sheets are reviewed by the office the afternoon that they are to be taken over to the Deputy AA. The lay down on the general conspiracy is cursory and devoid of meaningful comments or suggestions. The fact that we did not approach the FBI for assistance prior to 17 Dec - a month after the mock trial - is not only indefensible, but an example of how this office and others have misled outsiders by pretending that interagency cooperation has been alive and well for time, when in fact the opposite is true.

It is claimed that the Tiger Team didn't do "shit" when in fact many of the products (i.e., AQ 101 and the statement of predicate facts) that they put together almost two years ago closely mirror products that taken us months to put together. In fact, even a cursory review of the Tiger Team materials we now (after several efforts to get them were sharply rebuffed by our own staff) shows that the Tiger Team had articulated many of the obstacles we now face and had warned that if these obstacles were not removed that prosecutions could not succeed.

As part of this atmosphere that you fostered, Maj (b)(6) was publicly rebuked for bringing this issue to the group's attention and you specifically stated that you had reviewed the tiger team materials, there was little if any usable material in them, and that the demise of the tiger team had been the result of an unfortunate personality clash and nothing else. A review of the files shows otherwise.

From June to December, you were only present in the office for brief periods, often less than 4 hours every two weeks. However, you continued to insist that CDR (b)(6) spoke for you and directed those who e-mailed you with concerns to address them with CDR (b)(6). It is difficult to believe that his deficiencies were unknown at that time, and consequently it is difficult to believe that you were unaware of the fact we had little to no direction during that time frame. The fact that he directed each of us in the office not to speak to you directly was, and remains to me, astonishing - but does permit one to argue that they were unaware of any difficulties during a critical period of this endeavor.

One justification for the concealment and minimization of the problems has been the often stated proposition that MG Altenburg will be able to remedy many of these problems when he becomes the

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Appointing Authority. However, you have recently stated that MG Altenburg is a good friend of yours, that you hope he will be heavily reliant on BG Hemingway for a period of time, and that we will not be forwarding any documentation of cases (e.g. proof analysis) to MG Altenburg which suggests that he will not be in a position to exercise independent judgment or oversight.

It is my opinion that the primary objective of the office has been the advancement of the process for personal motivations – not the proper preparation of our cases or the interests of the American people.

The posturing of our prosecution team chiefs to maneuver onto the first case is overshadowed only by the zeal at which they hide from scrutiny or review the specific facts of their case - thereby assuring their participation.

The evidence does not indicate that our military and civilian leaders have been accurately informed of the state of our preparation, the true culpability of our accuseds, or the sustainability of our efforts.

I understand that part of the frustration with Maj (b)(6) discussions with BG Hemingway was that you did not have the opportunity to discuss the matters with him in the first instance. It was clear from the discussions with BG Hemingway that he was unaware of the lack of preparation with our cases prior to signing the charges, or many of the other problems that we have discussed.

You have stated that you are confident that if you told MG Altenburg that we needed more time that he would give it to you. Underlying this comment is the fact that MG Altenburg has not been made aware of the significant shortcomings of our cases and our lack of preparation and cooperation with outside agencies.

I also have significant reason to believe that Mr. (b)(6) has not been advised in the most accurate and precise way. It appears that even the results and critiques of the mock trial, described like so many other efforts in this office as a "home run," were manipulated to present the maximum appearance of endorsement (for example, the reorganization and bold-face in Lt Col (b)(6) critique that was openly discussed in the office)

We originally alleged that the accuseds were responsible as principals for 9/11, the COLE and the embassy bombings. Additionally, we alleged that al QosI was involved with Mubarak and that al Bahlul was aware of Atta and Jarrah, and was somehow linked to a 9/11 meeting in Malaysia. I understand that significant policy decisions have yet to be vetted with DOJ OLC, and that they appeared less than totally comfortable with our theory of liability and culpability of the accuseds.

The comments we have heard in the office appear to revolve around one goal - to get the process advanced to the point that it can not be turned off. We are told that we just need to get defense counsel assigned, because then they can't stop the process and we can fix the problems. We just need to get charges approved because then they can't stop the process and then maybe we can fix the problems.

If the appropriate decisionmakers are provided accurate information and determine that we must go forward on the path we are currently on, then all would be very committed to accomplishing this task. However, it instead appears that the decisionmakers are being provided false information to get them to make the key decisions, to only learn the truth after a point of no return.

It is at least possible that the appropriate officials would be more concerned about approving charges, arraigning accuseds, and signing more RTBs prior to the arguments in front of the Supreme Court if they knew the true state of the cases and the position they will be left in this fall.

[It is also unclear how the steadfast refusal to have the prosecutors co-located with the CITF agents is in the interests of the American people or the preparation of the cases, and could be motivated by anything but a purely personal issue with someone involved in the process. You have admitted that both organizations productivity would be greatly increased.]

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To address at least some of the underlying issues, the following may be proposed:

1. After fully informing the sages or invitees to the Mock Trial of the deficiencies we now acknowledge, solicit their recommendations and suggested courses of action.
2. Before MG Altenburg signs in -- taking on the AA responsibility and further damaging his lucrative private practice -- fully and accurately brief him on the status of our cases, our theories of liability, and the likely timetable in which we would be able to prepare cases after al Bahlul and al Qosl.
3. Fully and accurately brief Mr. (b)(6) and DOJ on the status of our cases, our theories of liability, and the likely timetable in which we would be able to prepare cases after al Bahlul and al Qosl.
4. Take immediate action within the office to develop a comprehensive prosecution strategy.
5. Take immediate action within the office to establish an environment that fosters openness, honesty, and ethical behavior.
6. Replace current prosecutors with senior experienced trial litigators capable of maintaining objectivity while zealously preparing for trial.

Instead, what I fear the reaction to Maj (b)(6) and my concerns will simply be a greater effort to make sure that we are walled off from the damaging information - as we are aware has been attempted in the past.

I would like to conclude with the following -- when I volunteered to assist with this process and was assigned to this office, I expected there would at least be a minimal effort to establish a fair process and diligently prepare cases against significant accused. Instead, I find a half-hearted and disorganized effort by a skeleton group of relatively inexperienced attorneys to prosecute fairly low-level accused in a process that appears to be rigged. It is difficult to believe that the White House has approved this situation, and I fully expect that one day, soon, someone will be called to answer for what our office has been doing for the last 14 months.

I echo Maj (b)(6) belief that I can not morally, ethically, or professionally continue to be a part of this process. While many may simply be concerned with a moment of fame and the ability in the future to engage in a small-time practice, that is neither what I aspire to do, nor what I have been trained to do. It will be expected that I should have been aware of the shortcomings with this endeavor, and that I reacted accordingly.

v/r,

Capt (b)(6)

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

From: (b)(6) MAJ, DoD OGC
 Sent: Thursday, March 11, 2004 16:19
 To: (b)(6) CAPT, DoD OGC
 Cc: (b)(6) (b)(6) COL, DoD OGC
 Subject: RE: Meeting with Colonel (b)(6) and myself, 4:00 p.m. today, Col (b)(6) office

Ma'am

While I appreciate the sentiment, I have to tell you that I don't see a lot of use continuing to talk about this stuff, unless your looking at reassigning us out of this office. I don't intend to speak for (b)(6) although I know he feels the same way, but for me I sincerely believe that this process is wrongly managed, wrongly focused and a blight on the reputation of the armed forces. I don't have anything new to say. I am pretty sure that everyone in the world knows my sentiments

Message

Page 10 of 11

about this office and this process.

Certainly there have been some unfortunate symptomatic issues like Cdr (b)(6) recently heightened animosity towards John (and I'm not going to let that one go either), but my fundamental concerns here have nothing to do with personality conflicts or intellectual disagreements.

I don't think that anyone really understands what our mission is, but whatever we are doing here is not an appropriate mission. I consider the insistence on pressing ahead with cases that would be marginal even if properly prepared to be a severe threat to the reputation of the Military Justice System and even a fraud on the American people - surely they don't expect that this fairly half-assed effort is all that we have been able to put together after all this time.

At the same time, my frank impression of my colleagues is that they are minimizing and/or concealing the problems we are facing and the potential embarrassment of the Armed Forces (and the people of the United States) either because they are afraid to admit mistakes, feel powerless to fix things, or because they are more concerned with their own reputations than they are with doing the right thing. Whether I am right or wrong about that, my utter contempt for most of them makes it impossible for me to work effectively.

Frankly, I became disgusted with the lack of vision and in my view the lack of integrity long ago and I no longer want to be part of the process - my mindset is such that I don't believe that I can effectively participate - professionally, ethically, or morally.

I lie awake worrying about this every night. I find it almost impossible to focus on my part of the mission - after all, writing a motion saying that the process will be full and fair when you don't really believe it will be is kind of hard - particularly when you want to call yourself an officer and a lawyer. This assignment is quite literally ruining my life.

I really see no way to fix this situation other than reassignment. I don't want to be an obstacle to anyone, but I'm not going to go along with things that I think are wrong - and I think this is wrong. It's not like I'm going to change my opinion in order to "go along with the program." I'm only going to persist in doing what I think is right and at some point that is going to lead to even harder feelings. Half the office thinks we are traitors anyway and frankly I think they are gutless, simple-minded, self-serving, some, or all of the above so you can see how that's going to go...

I know even well-meaning people get tired of hearing this, but the fact is that I really can't stomach doing this and I really don't want to waste time talking about it.

PS: (b)(6) not back yet. I think he was at FBI this afternoon.

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

From: (b)(6) CAPT, DoD OGC
Sent: Thursday, March 11, 2004 13:36
To: (b)(6)
Cc: (b)(6) COL, DoD OGC
Subject: Meeting with Colonel (b)(6) and myself, 4:00 p.m. today, Col (b)(6) office

Major (b)(6) and Captain (b)(6)

Captain (b)(6) and I had a long talk this morning. Based on his expressions of concern for some unresolved issues, including both ethical matters and personal treatment of the Air Force lawyers, I have asked the Colonel to meet with us all this afternoon. This is meant to be an open and frank exchange, and a chance to put everything on the table for full discussion.

VR/R

03/17/04 WBD 08:34 FAX

(b)(6)

HQ USAF/JA

@012

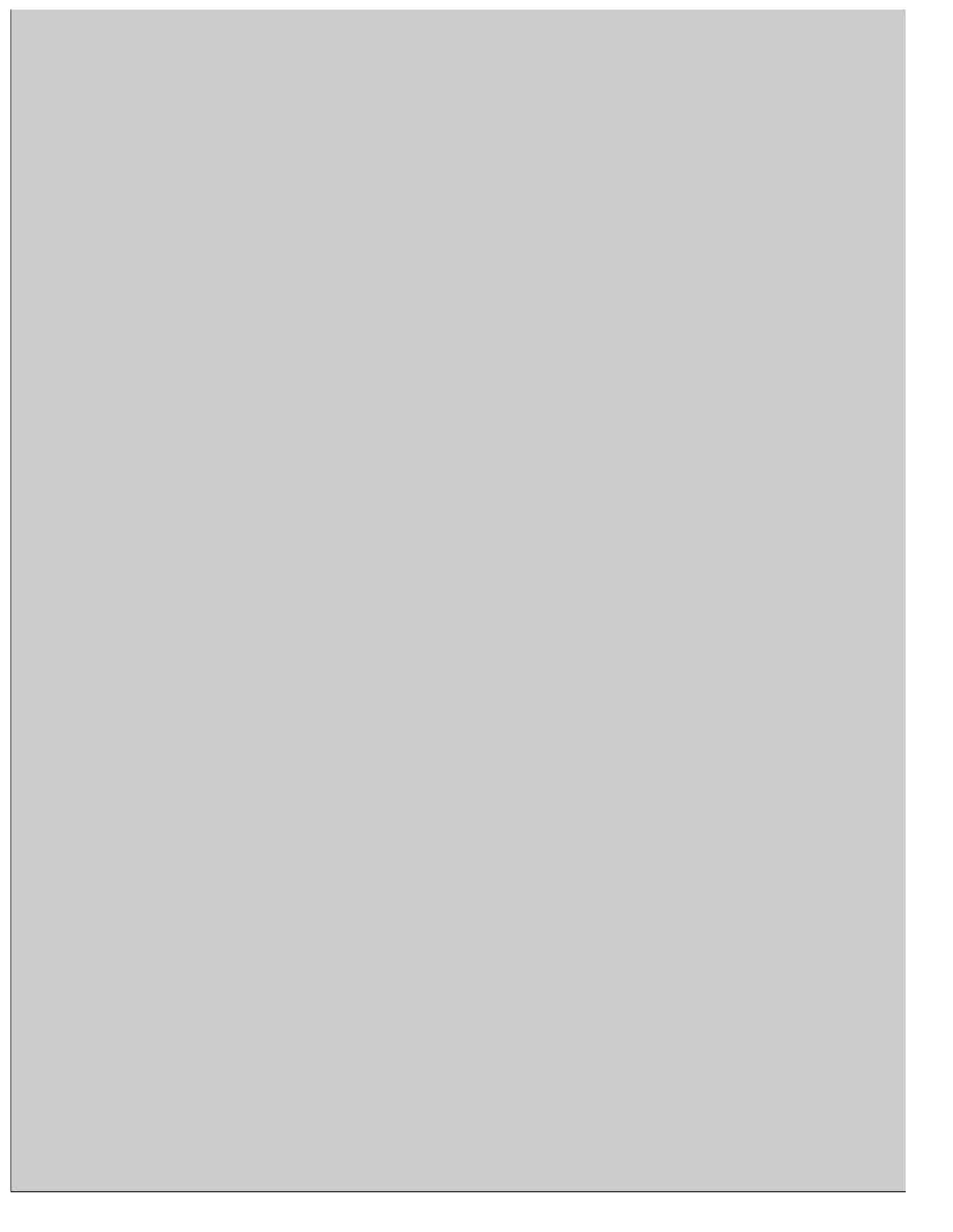
Message

Page 11 of 11

(b)(6)

Capt, JAGC, USNR
Office of Military Commissions

(b)(6)





I feel a responsibility to emphasize a few issues. I do not think that our current troubles in the office stem from a clash of personalities. It would be a simple, common, and easily remedied situation to correct if this were true. People could be reassigned or removed.

① It is my opinion that our problems are much more fundamental. Our cases are not even close to being adequately investigated or prepared for trial. This has been openly admitted privately within the office. There are many reasons why we find ourselves in this unfortunate and uncomfortable position – the starkest being that we have had little to no leadership or direction for the last eight months. It appears that instead of pausing, conducting an honest appraisal of our current preparation, and formulating an adequate prosecution plan for the future, we have invested substantial time and effort to conceal our deficiencies and mislead not only each other, but also those outside our office either directly responsible for, or asked to endorse, our efforts. My fears are not insignificant that the inadequate preparation of the cases and misrepresentation related thereto may constitute dereliction of duty, false official statements, or other criminal conduct.

② **An environment of secrecy, deceit and dishonesty exists within our office.** This environment appears to have been passively allowed to flourish, if it has not been actively encouraged. The examples are many, but a few include:

1. **CDR (b)(6) misrepresentations at the Mock Trial** – CDR (b)(6) made many misrepresentations at the Mock Trial, to include stating that we had no reason to believe that al Bahlul had suffered any mistreatment or torture. When I confronted him immediately after the mock trial with his notes to the contrary, he admitted that he was aware of abuse allegations related specifically to al Bahlul. Interestingly, it was because of Prof. (b)(6) comments at the mock trial that we even began to inquire into the conditions at the detention camps in AF, which prior to the mock trial had been consciously ignored. Other troubling aspects of the mock trial include, but are not limited to: statements that we would be ready for trial in 3 days, that al Bahlul has maintained from day one that he is a member of AQ, the deliberate and misleading presentation of select statements from al Bahlul, the careful coordination of the schedule to limit meaningful questions, the conscious inclusion of an overwhelming amount of paper in the notebooks, and the refusal to include a proof analysis.

2. **Suppressing FBI Allegations of Abuse at Bagram** – Over dinner and drinks, (b) and Lt (b)(6) heard from FBI agents that detainees were being abused at the Bagram detention facility. Lt (b)(6) told (b) after dinner that they couldn't report the allegations because it was told to them "in confidence." (b) told CDR (b)(6) Lt Col (b)(6) and (b)(6) anyway, and all three stated that there was not credible evidence and concluded on their own volition that they should not report the allegation to you or other members of the office. Interestingly, CDR (b)(6) recently suggested the Lt (b)(6) despite his lack of experience and judgment, be sent to review the CID reports of abuse at Bagram.

3. **Refusal to give Mr. (b)(6) the COLE video** – Mr. (b)(6) asked CDR (b)(6) twice for a copy of the COLE video. I heard CDR (b)(6) ask CDR (b)(6) whether she should take a copy of the video over to Mr. (b)(6). CDR (b)(6) told her not to, and that maybe in a few days Mr. (b)(6) would forget that he asked for it.

4. **The disappearance/destruction of evidence** – As I have detailed to you, my copy of CDR (b)(6) notes detailing the 302 in which al Bahlul claims torture and abuse is now missing from my notebook. The 302 can not be located. Additionally, (b)(6) of the FBI related last week that he called and spoke to CDR (b)(6) about the systematic destruction of statements of the detainees, and CDR (b)(6) said that this did not raise any issues.

5. **"I've known about this for a year."** Hamden's name is on the UN 1267 list, and we only learned of it in Dec. When CDR (b)(6) was confronted with this information, he claimed that he had known about it for the last year. No attempt had been made prior to Dec to discover upon what evidence Hamden was added to the list, and we still don't know. If he was aware of this fact, one is left to wonder why no inquiry was made with the State Department. He made the same "I've known about this for a year" claim about the Tiger Team AQ 101 brief, although he has had many of us searching for the information contained within it for months.

6. **CDR (b)(6) misrepresentations at the office overview of his case.** As detailed in a previous e-mail to you, CDR (b) made numerous misrepresentations concerning his case at the office meeting to discuss his case, indicating that he either consciously lied to the office, or does not know the facts of his case after 18 months of working on it.

I have discussed each of these specific examples with you, and you told me that you had taken corrective action to some. For example, in reference to paragraph 2, I asked how I was suppose to trust these attorneys to review

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documents and highlight exculpatory evidence and you responded that "when the time comes" you would put out very direct guidance. I do not believe that ethical behavior is something that can be directed during selective time periods.

These examples are well known to the members of this office, yet there has been no public rebuke of the behaviors. Hence, the environment and behaviors continue to flourish. I am left to wonder why at an office meeting we were not told:

"I understand that misrepresentations are being made concerning the facts of our cases. If I find out this happens again, the responsible party is going to be fired."

"I understand that evidence is being withheld from our civilian leadership. If I find out this happens again, someone is going to be fired."

"I understand that allegations of abuse are not being brought to my attention or reported to the appropriate authorities. If I find out this happens again, someone is going to be fired."

"I understand that evidence is being hidden or destroyed. If I find out this happens again, someone is going to be fired."

Even in regards to CDR (b)(6) recent behavior towards Maj (b)(6) and myself, the office was not told the real reason for why he has been removed as the deputy, only further feeding the underlying animosity and indicating that the action was forced upon you and not really justified - if not, surely you would have taken a less conciliatory stance.

You stated in our meeting last week that what else can you do but lead by example.

In regard to this environment of secrecy, deceit and dishonesty, the attorneys in this office appear to merely be following the example that you have set.

A few examples include:

You continue to make statements to the office that you admit in private are not true. With many of the issues listed here, the modus operandi appears to be for you to make a statement at a meeting, pause, and when no one states a disagreement, assume that everyone is in agreement. To the listener, it is clear that the statements are not true, but we are not to correct, disagree, or question you in front of the office. (For example, when I asked you basic questions concerning conspiracy law at an office briefing, CDR (b)(6) called me into his office and told me that my conduct was borderline disrespectful because it put you in an uncomfortable position.)

different from disingenuous

① mails

You have stated for months that we are ready to go immediately with the first four cases. At the same time, emails are being sent out admitting that we don't have the evidence to prove the general conspiracy, let alone the specific accused's culpability. In fact, it may be questioned how we are in a better position to prove the general conspiracy today than we were last November at the mock trial. Of course, it should also be noted that we have substantially changed course even since November and now acknowledge that the plan to prove principal liability for TANBOM, KENBOM, COLE and PENTBOM was misguided to say the least.

We are rushing to put 9 more RTBs together for cases that you admit are not even close to being ready to go trial. We are also being pressed to prepare charge sheets, and you have asked that discovery letter go out on these cases. We are led to believe that representations are being made that these cases can be prosecuted in short order, when this simply is not true.

You told the AF generals that we had no indication that al Bahlul had been tortured. It was after this statement, which CDR (b)(6) quietly allowed to go uncorrected, that I brought up CDR (b)(6) missing notes to the contrary. You admitted to me that you were aware that al Bahlul had made allegations of abuse.

reason to be here + indication vs allegation

In our meeting with OGA, they told us that the exculpatory information, if it existed, would be in the 10% that we will not get with our agreed upon searches. I again brought up the problem that this presents to us in the car on the way back from the meeting, and you told me that the rules were written in such a way as to not require that we conduct such thorough searches, and that we weren't going to worry about it.

You state in a morning meeting that al Bahlul has claimed "in every statement" that he was an AQ member.

e-mail
②

When I told you after the meeting that this was not true, you simply admitted that you hadn't read the statements but were relying on what CDR (b)(6) had told you. As I have detailed in another e-mail, it does not appear that CDR (b)(6) is even aware of how many statements al Bahlul has made, let alone conducted a thorough analysis.

When Maj (b)(6) raises concerns about him advising the AA given the potential appearance of partiality, you advised him not to stop giving advice, but to only give advice orally.

CDR (b)(6) has emphasized at morning meetings, with you in the office, that we do not need to be putting so many of our concerns in e-mails and that we can just come down and talk. Given the disparity between what is said in casual conversation and the statements made by our leadership in e-mails, it is understandable that we have relied more and more on written communications.

You have repeatedly said to the office that the military panel will be handpicked and will not acquit these detainees, and we only needed to worry about building a record for the review panel. In private you have went further and stated that we are really concerned with review by academicians 10 years from now, who will go back and pick the cases apart. } don't see the point

We continue to foster the impression that CITF is responsible for our troubles and lack of evidence, although we have learned in the last few weeks that we haven't even sat down with the case agents to figure out what evidence they have and how they have gathered it. You acknowledged last week that we will not even try to fix the problems with CITF. What is perhaps most disturbing about the lack of progress by our investigative agents is that it does not appear we have ever adequately explained the deficiencies to the CITF leadership.

Our morning meetings, briefings, and group discussions are short and superficial – it could be argued designed to permit a claim that the office has discussed or debated a certain topic without permitting such meaningful discussions to actually take place. Two prosecutors were scheduled 15 minutes each to go over the facts of their case. Charge sheets are reviewed by the office the afternoon that they are to be taken over to the Deputy AA. The lay down on the general conspiracy is cursory and devoid of meaningful comments or suggestions. The fact that we did not approach the FBI for assistance prior to 17 Dec – a month after the mock trial – is not only indefensible, but an example of how this office and others have misled outsiders by pretending that interagency cooperation has been alive and well for some time, when in fact the opposite is true.

It is claimed that the Tiger Team didn't do "shit" when in fact many of the products (i.e., AQ 101 and the statement of predicate facts) that they put together almost two years ago closely mirror products that have taken us months to put together. In fact, even a cursory review of the Tiger Team materials we now have (after several efforts to get them were sharply rebuffed by our own staff) shows that the Tiger Team had articulated many of the obstacles we now face and had warned that if these obstacles were not removed that prosecutions could not succeed.

As part of this atmosphere that you fostered, Maj (b)(6) was publicly rebuked for bringing this issue to the group's attention and you specifically stated that you had reviewed the tiger team materials, there was little if any usable material in them, and that the demise of the tiger team had been the result of an unfortunate personality clash and nothing else. A review of the files shows otherwise.

From June to December, you were only present in the office for brief periods, often less than 4 hours every two weeks. However, you continued to insist that CDR (b)(6) spoke for you and directed those who e-mailed you with concerns to address them with CDR (b)(6). It is difficult to believe that his deficiencies were unknown at that time, and consequently it is difficult to believe that you were unaware of the fact that we had little to no direction during that time frame. The fact that he directed each of us in the office not to speak to you directly was, and remains to me, astonishing – but does permit one to argue that they were unaware of any difficulties during a critical period of this endeavor.

One justification for the concealment and minimization of the problems has been the often stated proposition that MG Altenburg will be able to remedy many of these problems when he becomes the Appointing Authority. However, you have recently stated that MG Altenburg is a good friend of yours, that you hope he will be heavily reliant on BG Hemingway for a period of time, and that we will not be forwarding any documentation of cases (e.g. proof analysis) to MG Altenburg which suggests that he will not be in a position to exercise independent judgment or oversight.

It is my opinion that the primary objective of the office has been the advancement of the process for personal motivations -- not the proper preparation of our cases or the interests of the American people.

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"chr . . .

The posturing of our prosecution team chiefs to maneuver onto the first case is overshadowed only by the zeal at which they hide from scrutiny or review the specific facts of their case – thereby assuring their participation.

The evidence does not indicate that our military and civilian leaders have been accurately informed of the state of our preparation, the true culpability of our accuseds, or the sustainability of our efforts.

I understand that part of the frustration with Maj (b)(6) discussions with BG Hemingway was that you did not have the opportunity to discuss the matters with him in the first instance. It was clear from the discussions with BG Hemingway that he was unaware of the lack of preparation with our cases prior to signing the charges, or many of the other problems that we have discussed.

You have stated that you are confident that if you told MG Altenburg that we needed more time that he would give it to you. Underlying this comment is the fact that MG Altenburg has not been made aware of the significant shortcomings of our cases and our lack of preparation and cooperation with outside agencies.

I also have significant reason to believe that Mr. (b)(6) has not been advised in the most accurate and precise way. It appears that even the results and critiques of the mock trial, described like so many other efforts in this office as a "home run," were manipulated to present the maximum appearance of endorsement (for example, the reorganization and bold-face in Lt Col (b)(6) critique that was openly discussed in the office) } The point?

We originally alleged that the accuseds were responsible as principles for 9/11, the COLE and the embassy bombings. Additionally, we alleged that al Qosf was involved with Mubarak and that al Bahlul was aware of Atta and Jarrah, and was somehow linked to a 9/11 meeting in Malaysia. I understand that significant policy decisions have yet to be vetted with DOJ OLC, and that they appeared less than totally comfortable with our theory of liability and culpability of the accuseds.

The comments we have heard in the office appear to revolve around one goal – to get the process advanced to the point that it can not be turned off. We are told that we just need to get defense counsel assigned, because then they can't stop the process and we can fix the problems. We just need to get charges approved because then they can't stop the process and then maybe we can fix the problems. } The point?

If the appropriate decisionmakers are provided accurate information and determine that we must go forward on the path we are currently on, then all would be very committed to accomplishing this task. However, it instead appears that the decisionmakers are being provided false information to get them to make the key decisions, to only learn the truth after a point of no return.

It is at least possible that the appropriate officials would be more concerned about approving charges, arraigning accuseds, and signing more RTBs prior to the arguments in front of the Supreme Court if they knew the true state of the cases and the position they will be left in this fall.

[It is also unclear how the steadfast refusal to have the prosecutors co-located with the CTF agents is in the interests of the American people or the preparation of the cases, and could be motivated by anything but a purely personal issue with someone involved in the process. You have admitted that both organizations productivity would be greatly increased.]

To address at least some of the underlying issues, the following may be proposed:

1. After fully informing the sages or invitees to the Mock Trial of the deficiencies we now acknowledge, solicit their recommendations and suggested courses of action.
2. Before MG Altenburg signs in -- taking on the AA responsibility and further damaging his lucrative private practice -- fully and accurately brief him on the status of our cases, our theories of liability, and the likely timetable in which we would be able to prepare cases after al Bahlul and al Qosf.
3. Fully and accurately brief Mr. (b)(6) and DOJ on the status of our cases, our theories of liability, and the likely timetable in which we would be able to prepare cases after al Bahlul and al Qosf.
4. Take immediate action within the office to develop a comprehensive prosecution strategy.

3/15/2004

RM L.A.

5. Take immediate action within the office to establish an environment that fosters openness, honesty, and ethical behavior.
6. Replace current prosecutors with senior experienced trial litigators capable of maintaining objectivity while zealously preparing for trial.

Instead, what I fear the reaction to Maj (b)(6) and my concerns will simply be a greater effort to make sure that we are walled off from the damaging information – as we are aware has been attempted in the past.

I would like to conclude with the following -- when I volunteered to assist with this process and was assigned to this office, I expected there would at least be a minimal effort to establish a fair process and diligently prepare cases against significant accused. Instead, I find a half-hearted and disorganized effort by a skeleton group of relatively inexperienced attorneys to prosecute fairly low-level accused in a process that appears to be rigged. It is difficult to believe that the White House has approved this situation, and I fully expect that one day, soon, someone will be called to answer for what our office has been doing for the last 14 months.

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v/r,

Capt (b)(6)

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

From: (b)(6) Robert, MAJ, DoD OGC
Sent: Thursday, March 11, 2004 16:19
To: Davenport, Teresa, CAPT, DoD OGC
Cc: (b)(6) (b)(6) COL, DoD OGC
Subject: RE: Meeting with Colonel (b)(6) and myself, 4:00 p.m. today, Col (b)(6) office

Ma'am

While I appreciate the sentiment, I have to tell you that I don't see a lot of use continuing to talk about this stuff, unless your looking at reassigning us out of this office. I don't intend to speak for John although I know he feels the same way, but for me I sincerely believe that this process is wrongly managed, wrongly focused and a blight on the reputation of the armed forces. I don't have anything new to say. I am pretty sure that everyone in the world knows my sentiments about this office and this process.

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Frankly, I became disgusted with the lack of vision and in my view the lack of integrity long ago and I no

3/15/2004
 ...

longer want to be part of the process - my mindset is such that I don't believe that I can effectively participate - professionally, ethically, or morally.

I lie awake worrying about this every night. I find it almost impossible to focus on my part of the mission - after all, writing a motion saying that the process will be full and fair when you don't really believe it will be is kind of hard - particularly when you want to call yourself an officer and a lawyer. This assignment is quite literally ruining my life.

I really see no way to fix this situation other than reassignment. I don't want to be an obstacle to anyone, but I'm not going to go along with things that I think are wrong - and I think this is wrong. It's not like I'm going to change my opinion in order to "go along with the program." I'm only going to persist in doing what I think is right and at some point that is going to lead to even harder feelings. Half the office thinks we are traitors anyway and frankly I think they are gutless, simple-minded, self-serving, some, or all of the above so you can see how that's going to go...

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PS: (b)(6) not back yet. I think he was at FBI this afternoon.

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

From: (b)(6) CAPT, DoD OGC
Sent: Thursday, March 11, 2004 13:36
To: (b)(6) MAJ, DoD OGC; (b)(6) CPT, DoD OGC
Cc: (b)(6) (b)(6) COL, DoD OGC
Subject: Meeting with Colonel (b)(6) and myself, 4:00 p.m. today, Col (b)(6) office

Major (b)(6) and Captain (b)(6)

Captain (b)(6) and I had a long talk this morning. Based on his expressions of concern for some unresolved issues, including both ethical matters and personal treatment of the Air Force lawyers, I have asked the Colonel to meet with us all this afternoon. This is meant to be an open and frank exchange, and a chance to put everything on the table for full discussion.

VR/R

(b)(6)
 Capt, JAGC, USNR
 Office of Military Commissions
 (b)(6)

29m
 3/11/04
 3/15/2004

(b)(6) Col AF/JA

From: (b)(6) CPT, DoD OGC
Sent: Wednesday, January 14, 2004 6:16
To: (b)(6) Col AF/JA
Subject: RE: Our Conversation

Sir,

I apologize that this was not sent earlier but I have been out of the office all day. I am happy to provide any clarification deemed necessary. Although we do not relish it, Maj (b)(6) and I can continue in our roles of "agents of change" in an attempt to right the ship. We are just concerned about the sustainability of the effort and our survivability within the office.

v/r,

(b)(6)

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

From: (b)(6) Col AF/JA
Sent: Tuesday, January 13, 2004 13:21
To: (b)(6) CPT, DoD OGC
Subject: RE: Our Conversation

(b)(6) --looking for specifics, examples are great--background paper is perfect--(b)(6)

-----Original Message-----
From: (b)(6) CPT, DoD OGC
Sent: Tuesday, January 13, 2004 1:18 PM
To: (b)(6) Col AF/JA
Subject: RE: Our Conversation

Sir,

I was hoping to clarify whether you are looking for an actual list or more of a background paper, and whether you would like examples provided. I want to make sure I am preparing what you are looking for.

v/r,

(b)(6)

-----Original Message-----
From: (b)(6) Col AF/JA
Sent: Tuesday, January 13, 2004 12:24
To: (b)(6) CPT, DoD OGC
Subject: Our Conversation

(b)(6) --need you to give me a specific list of the things you think are broken. E-mail or hard copy, doesn't matter.--(b)(6)

The following is an attempt to highlight and explain many, but not all, of the current concerns held by active duty Air Force members of the Office of the Chief Prosecutor (Maj (b)(6) and Capt (b)(6) relating to our office and our duties. This paper is prepared out of a sincere concern for the mission that we have been assigned, as well as the reputation of the Air Force Judge Advocate Corps.

1. Office Overview. The organizational difficulties and challenges faced by this office can only be put in context if one understands our current staffing and dearth of experience. There are currently nine attorneys on active duty in the office, to include the Chief Prosecutor. The Deputy Prosecutor graduated law school in 1991 and Major (b)(6) graduated in 1994. The two Marine O-5 team chiefs and one Army O-4 graduated in 1996. Capt (b)(6) graduated in 1997, Capt (b)(6) in 1998 and a Navy O-3 in 2000. (b)(6) our very talented civilian attorney, graduated in 2002. The office is divided into four main teams (bodyguards, financiers, high-threat-trigger-pullers, and explosives), with two or three attorneys assigned to each team. While each of the attorneys, save Mr (b)(6) has significant experience in military justice prosecutions, very few if any of the prosecutors have experience with complex litigation or voluminous discovery. Only Col (b)(6) and Maj (b)(6) have any significant experience in international law. The prosecution team only has two paralegals and despite our anticipated reliance on documents written in Arabic, Pushtu, and Urdu and witnesses who speak those languages, we currently have no translators or interpreters assigned to the staff. This is despite the fact that there is a well-known problem with documents being translated inaccurately and incompletely due to the increased demands on linguists as a result of the GWOT.

2. Mission Overview. With this staff, which has been supplemented with two reserve personnel and one DOJ attorney, we are responsible for identifying and preparing the prosecution of tens, if not hundreds, of detainees in a legal proceeding not utilized in 50 years. The military commissions process in and of itself is highly controversial, but the use of such a proceeding to prosecute terrorists is completely unprecedented. Consequently, we face significant challenges to our process in the form of public critiques, collateral court challenges, and in-court motions and appeals practices. We anticipate significant legal challenges to the proceedings and our assertion of jurisdiction. These challenges will be primarily based on US treaty obligations, the evolution of international law since the last use of military commissions (post World War II), and decades of US practice that is somewhat inconsistent with our current position. Moreover, we are also challenged to work with the Criminal Investigative Task Force (CITF) in gathering and preparing the case files, as well as coordinating with a host of other agencies, to include DOJ, FBI, OGA, DIA, and the State Department to obtain access to their work products related to the war on terrorism. DOJ/FBI in particular has massive resources devoted to investigation of Al Qaida and Al Qaida operations, to include the TANBOM, KENBOM, and PENTTBOM investigations.

3. Current Case Status. On July 3, 2003, the President designated six individuals as subject to the jurisdiction of the military commissions. This was done in a document referred to as a "Reason to Believe" (RTB) determination. Since this time period, RTB packages have been prepared on at least eight other detainees. We are told that the Chief Prosecutor wishes to present Maj Gen Altenberg – the new appointing authority – eight additional RTB packages upon his arrival for coordination and the signature of the President. Additionally, we are also

told that the charge sheets for the first two or three cases have been thoroughly reviewed and are ready to be approved by Maj Gen Altenberg. Finally, we have been told that it is hoped that charges will be approved in 14 cases by the summer. The trial counsel assigned to these cases have been told to have charge sheets and trial notebooks prepared by 1 Feb 04. It is assumed that each case will include at least one common charge - general conspiracy charge - making consistency between the cases significant.

4. Lack of Common Understanding within the Office. To date, and despite continued requests, the attorneys in the office have had little, if any, discussion concerning the crimes and elements contained in Military Commission Instruction #2. In addition to the obvious point that everyone should have a common understanding of the crimes and elements, it is equally important to note that the crimes and elements instruction states that it is not binding on the military commission panel. Consequently, we will not only have to prove the conduct that meets the elements of the offense, but also the very existence of the offense under customary international law. It has become abundantly clear that the attorneys do not possess an understanding of these crimes and elements or their viability under international law. Moreover, to date, we have had little, if any, discussion regarding how charges will be drafted or what evidence will be used to prove any particular element. In fact, until this week, we have generally not met as an office more than once every two weeks despite numerous requests for us to do so. Even within some teams, information is not shared with the other attorneys and input is discouraged. We have not, as an office, reviewed or discussed the proof analysis for any case. The proof analysis for those cases which can be located on our shared drive may be described as less than adequate.

The lack of coordination and understanding within the office may be best illustrated by an example from the Mock Trial of one case, presumed to be our first, which was held in November. A number of high-level legal advisors to the administration were in attendance, and it was understood that our performance was key to our cases moving forward. Our request to be briefed as an office on the facts of the case prior to the Mock Trial was denied by the Deputy Prosecutor, who was lead counsel on the case. Our request to discuss the proof analysis as an office was also denied as a waste of time. Tellingly, no substantive input regarding the presentation of the evidence was solicited from any attorney in the office. This lack of knowledge not only prevented any attorney from speaking up during the discussion, but also prevented any discussion regarding the candor of the statements made to the guests, which has since come into question. Although Capt [b)(6)] is assigned to be second chair on the first case, his requests to be briefed on the case evidence and included on witness interviews has been repeatedly brushed aside. This had made preparation for trial extremely time-consuming and laborious, and also ensures that no other attorney has an understanding of the evidence that we intend to present or the reasons for those decisions.

Predictably, the attorneys in the office do not know how the charge sheets for the first cases have been prepared or what evidence will be introduced to prove the general conspiracy. This is despite the stated expectation that charge sheets will shortly be accomplished and potentially approved by the Appointing Authority. Last week, we met as an office for the first time to generally discuss the conspiracy charge. We have repeatedly requested to talk about the charge sheet. When questions were raised at the meeting, members of the office later stated that it was

inappropriate to question how the charges would be formulated or how we would prove them in an open setting.

In response to many of the concerns that had been voiced, the Chief Prosecutor reorganized the office prior to Christmas. He stated that he would be in the office on a regular basis and that we would hold morning meetings. Additionally, "task forces" were established within the office; most notably, Discovery, Sentencing, and al Qaida. Capt (b)(6) and Mr. (b)(6) who had previously worked Sentencing and al Qaida, respectively, were reassigned to Discovery and Sentencing, respectively. Mr. (b)(6), a seasoned DOJ international lawyer was assigned to al Qaida. Capt (b)(6) has never handled complex discovery, Mr. (b)(6) has never witnessed a real sentencing case, and Mr. (b)(6) has no prior background with al Qaida. For the last month, we have been awaiting a presentation by Mr. (b)(6) regarding his suggestions for proving the necessary elements of the general AQ conspiracy.

5. Lack of Evidence Collected/Analyzed/Identified. Despite previous representations, to include at the Mock Trial, our office currently possess little to none of the evidence that links al Qaida to the 9/11 terrorists attacks. We met with the FBI on 17 Dec and for the first time asked if they could establish that AQ was behind the attacks in an unclassified setting. We met with DOJ just this week to ask the attorneys prosecuting in the EDVA what evidence they could provide. We were told that they would get back to us.

Conceivably, our evidence would be gathered and produced by CITF. We have had a significant, but unacknowledged problem obtaining useful products from CITF. There are many excuses offered as to why the CITF relationship is unproductive, but at least one explanation is that CITF has not been apprised of what constitutes relevant evidence for proving these extremely controversial – even radical – charges such as conspiracy. The attorneys at CITF were briefed this week on our vision concerning the general conspiracy, incomplete as that may be. A meeting is also planned with the case agents next week.

We met for the first time as an office last Friday to discuss the types of evidence that each attorney has encountered and what agency produced that evidence. We suggested that we should develop within our office a checklist to aid in our pre-trial preparation, and that a checklist should also be provided to our CITF agents to standardize the initial investigation of the case. It is not an overstatement to say that this simple suggestion was met with much fanfare. This is despite the fact that both suggestions (discussing the evidence and the checklist) had been made numerous times in the preceding months.

6. Discovery. There has been a recent push to prepare for and provide limited discovery to the two defense counsel assigned to represent two detainees. In the absence of a charge sheet, and more importantly, knowledge of what evidence we intend to use to prove the common conspiracy charge, discovery is nearly impossible. Moreover, given the lack of initial evidence collection, much of the requested material will in fact be evidence received and reviewed for the first time. It has been said by at least one attorney in the office (who is also a DOJ attorney) that we are approximately one-year behind in this regard.

7. Appearance of Impartially. It is important to understand that the Appointing Authority serves not only as a convening authority in reviewing and approving charges, but also as an appellate court since the AA may ultimately rule on motions submitted by either side. This point is not only articulated in our Orders and Instructions, but also has been a centerpiece of the DOD PA campaign attempting to show that the commissions will be fair. Recently, the Legal Advisor to the AA requested a copy of the motion responses being prepared by the Prosecution. This move has been discouraged, but it highlights the lack of understanding of roles. We have also been informed that a move is underway to allow the Legal Advisor to the AA to officially rate the Chief Prosecutor – a disaster from a fairness/impartiality/international law perspective.

More significantly, however, it is fairly common knowledge that the Chief Prosecutor has been conducting ex parte communications with the officer presumptively selected to be the first Presiding Officer. The Presiding Officer not only functions in some sense as the trial judge, but also as a member of the jury. It has been admitted that e-mails have been exchanged concerning, i.e., whether a guilty plea inquiry will be conducted. Even if this is technically not improper, it is a poignant illustration of how this organization does not understand the kinds of scrutiny we will face and the importance of maintaining an appearance of propriety at all costs.

8. Sustainability. Even if it is somehow possible to complete the first two cases, we are extremely concerned about our ability to continue with expected follow-on cases in a timely manner given the current procedures in place in our office and our interaction with CITF.

Conclusion. The issues described above are not raised without careful thought and consideration. Although some limited efforts have been made to address the deficiencies, we continued to be extremely concerned with the office's current status and our efforts to correct the problems have not been well-received. Our anxiety is heightened by the state of confusion and lack of preparation within the office, the complexity of the cases, the lack of oversight/understanding of the cases by upper management, the confidence of the public statements regarding our state of readiness, and the ultimate impact the proceedings will have on our country and international law.

(b)(6)

Col AF/JA

From: (b)(6) MAJ, DoD OGC
Sent: Tuesday, March 16, 2004 3:52 PM
To: (b)(6) Col AF/JA

Sir

I am assiduously avoiding emails to the anyone.

However, felt this was a necessary update.

Today Col (b)(6) called a meeting wherein he proceeded to again relate how he felt that he and the office had been unfairly maligned and that he hated to see two officers he admired and respected (b)(6) and me) lodge such hurtful and untruthful allegations.

As I told him and the rest of the office at the time - I am not going to stand for this and I think he knows from my stance that it would not be a good idea to reengage with this type of self-serving diatribe, but on the other hand it is clear that we are at risk every moment that we are here.

Keeping In mind your many cautionary statements, I have to tell you that I am really at wit's end and having a hard time restraining myself. I can deal with relatively complex issues and intricate personnel problems, but here we are talking about an Army O-6 calling AF officers liars in a public setting. I don't really have any training for dealing with that.

BG Hemmingway has apparently circled the wagons around Col (b)(6) and mobilized the staff here to help Col (b)(6) with his "response to the allegations" so I don't expect any help from that end, but someone needs to do something about this.

I am really trying to keep the big picture in mind, but it isn't easy.

As I have come to recognize that this apparently is NOT a sincere process and no one really cares if we prosecute detainees correctly or not, my little micro view of the world has come to be the foremost consideration in my mind. I have a family that is depending on me - my wife gave up her career so I could come here - and these people are now directly attacking my reputation and livelihood. To be honest, I think this is quickly becoming a career ender for me and I am really having a hard time taking one for the team...

v/r

(b)(6)

(b)(6) Major, USAF

Department of Defense, Office of the General Counsel
Office of Military Commissions, Prosecution
1931 Jefferson Davis Highway
Suite 532, Arlington, VA 22202
Phone: (b)(6)
Fax: (b)(6)

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(b)(6)

Col AF/JA

From: (b)(6) MAJ, DoD OGC
Sent: Tuesday, March 16, 2004 7:41 AM
To: (b)(6) Col AF/JA
Subject: FW: Allegations of misconduct and unprofessionalism against Chief Sir

Just wanted to update you. (b)(6) Wolf sent the email below out in response to Col (b)(6) missive to the office.

Realize this email has caused a firestorm, but didn't anticipate the reaction to the fact that we emailed (b)(6) We have been emailing him for some time on the myriad of problems around here. To be honest, it was almost the only way to catalog even some of the mass of problems we are facing.

I know MG Fiscus was disappointed in us - while I am sorry about that, we really felt like we had to make a record. That email was in response to a meeting w/ Col (b)(6) where he attempted to gloss over a number of our big "I" word and "E" word concerns and he had Cap (b)(6) sitting there taking notes - a first ever.

Bottom line: didn't see how it benefited (b)(6) at all to forward our emails anywhere, so we didn't assess this as being particularly dangerous - moreover and probably more importantly, everything said in there is clearly true and the vast majority has both been verified by other sources and acknowledged by (b)(6) in previous meetings, conversations, or emails.

(b)(6) is mortified about having embarrassed the TJAG. I can barely get him to focus. I am less embarrassed as I just don't think there are any good answers here - this may not have been the best tactic in the world, but I kind of feel like we are damned if we do, damned if we don't.

v/r

(b)(6)

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

From: (b)(6) CPT, DoD OGC
Sent: Monday, March 15, 2004 13:41
To: (b)(6)
Cc: (b)(6)
Subject: RE: Allegations of misconduct and unprofessionalism against Chief Prosecutor

Sir,

As you know, I too have seen and been quite troubled by the incidents related by both Maj (b)(6) and Capt (b)(6) Frankly-for my own sanity-I have made a point not to keep a running tally of the incidents that form the basis for my upcoming departure. That being said, the messages below (combined with what I'm about to add) are a pretty good reflection of how I think my "list" would look.

The additional "situations" that come to mind:

1. The Moot Court: I witnessed Maj (b)(6) and Capt (b)(6) being urged to raise only a fraction of the issues they originally forecasted. Essentially, CDR (b)(6) directed them not to mount a zealous defense. It was clear that, instead of a genuine vehicle for improving the United States' position in Military Commissions, the moot court was mere window dressing-the goal being to avoid criticism of our case

preparation or courtroom presentation.

The sages assumed we were a team and that we had all played a role in the preparation of al Bahlul. As you know, that assumption was completely false. CDR (b)(6) wouldn't even let his co-counsel, Capt (b)(6) get a peek into what he was doing. I recall asking John (because I was completely ignorant of the on with prosecution cases as "the transfer attorney") why he wasn't playing more of a role in the moot court. He basically said he would be incapable of any greater role because he didn't know anything and CDR (b)(6) had been flying solo for months. I also recall dancing around questions from one sage regarding the facts of the case because I knew she would be mortified if I told her only one guy in the office (the one who was reading his compound, leading questions from a piece of paper the entire time) knew the facts of what we had long thought would be the first litigated case.

Finally, members of the office weren't asked once for our input regarding the outcome of the moot court. Maybe it was for the best, because my honest answer would have been that I was embarrassed. (Please note that I wasn't aware during the moot court that facts were being misrepresented . . . I learned that afterward. I would have been even more embarrassed (and a few other things) had I known.) I was embarrassed that the person you have called "our best litigator" gave an opening with too much detail, too little eye contact, choppy delivery and no apparent theme or theory. I was embarrassed that he didn't know his case well enough to float seamlessly through "fake" witnesses with whom he'd practiced numerous times. And finally, I was embarrassed at his curt, often hostile reaction to what I really thought was very mild criticism. (Frankly, I've seen very junior attorneys at the Air Force's intro-level trial ad course give similar performances and get reduced to tears as a result of instructor critiques; I've taught at that course a couple times, and I can tell you I would not have recommended CDR (b)(6) for future litigation duties, given his courtroom presence.)

2. Allegations of abuse at Bagram: CDR (b)(6) mentioned the allegation to me while I was detailed to Hamdan. His comment was "a couple of drunk FBI agents hardly constitute a prima facie case." I'm sure you recognize the problems with that statement . . .
3. Other comments by CDR (b)(6) I have heard him, on numerous occasions-many of which were in your presence-state that he "only cared about his case." Only once did I hear you clarify that we *all* needed to be concerned about *every* case (I took note because I had been waiting so long for it to happen). It was February. I firmly believe there are a number of things only he knows about that could have quite an impact on military commissions as a whole.

Last fall CDR (b)(6) announced that only those in the ranks of O-5 and above would have access to the SCIF-regardless of their clearance. He did this under the guise that I had left the SCIF unsecured; but real story is that he sent me to get the combination to the dial from (b)(6). Upon returning, I was told to enter the combo on the dial; I did so, but we soon realized that the combo to the sipher lock was not the same as we thought. So CW3 (b)(6) just started to push buttons. Remarkably, after numerous tries, it opened. But the Chief wasn't sure what he had entered. Then CDR (b)(6) came and entered his PIC (I was new to the office and didn't have mine). Then CDR (b)(6) instructed me to just prop the door so that CW3 (b)(6) (an individual he knew only had a Confidential clearance at the time-the rest of us found out later) could get in and out. He pinned the whole thing on me because, before I left for the day, I noticed that the SCIF had been closed but no one signed the card to verify it. Noting that the dial was spun off and the door (to which I did not have the combo) closed, I initialed the card, asked Lt Col (b)(6) to verify, and left. CDR (b)(6) who was awakened because the SCIF alarm sounded in the middle of the night (no PIC had been entered to close it), announced to everyone that we would be getting inspected and trained "because of (b)(6)". He also announced the policy that only O-5 & above would get the codes.

4. Keeping things from the front office: CDR (b)(6) knew that we had been directed to keep the front office apprised of our efforts regarding Hamdan's status on 13224. I believe that, like the Cole video, he has avoided fulfilling this promise in hopes that they'll simply forget. He doesn't want any more evidence from the UK because it might not be in line with what he already has.

5. Fueling fires of hostility within the office: the environment is clear when things like the following occur:
 - a. Following AF TJAG's visit, you stated in an office meeting that "they clearly had an agenda" and that it must have been prompted by "something they heard from (b)(6) or (b)(6) or (b)(6)". At that it was clear to everyone that those wearing blue uniforms were not to be regarded as part of the team.
 - b. Mr. (b)(6) during the first few weeks of his assignment here, outlined one of the goals of his TFD briefing as "convince Capt (b)(6)". This clearly implied that (b)(6), instead of an intelligent *member of our team*, was to be regarded as a troublemaker who only raised points with an eye toward derailing current operations.
 - c. During a TFaQ meeting, (b)(6) announced that the al Qosi team's 70+ page "proof analysis" had been dubbed a "piece of shit" by someone in the office. LtCol (b)(6) immediately, in front of about ten analysts, attorneys-and maybe enlisted-demanded to know who had said that. (b)(6) quipped, "you know." Then there were a number of comments in the room clearly indicating they were talking about (b)(6). I was particularly disturbed, as this was the same day you announced that we needed to "work as a team." At the conclusion of that meeting, there was some discussion about how the al Qosi attorneys were having trouble getting some interview documentation because (b)(6) was making them articulate relevance of the documents. I thought the office view of Capt (b)(6) was reflected by Mr. (b)(6) response that he could "take care of Capt (b)(6)". (Please note as a side issue that (b)(6) "quote" was completely inaccurate.)

6. No "vision:" We reorganize constantly. It's almost a joke. By the time somebody gets their feet wet in a particular case or task force, they're detailed to something else. This phenomenon perplexes me, and I can think of no potential motivation for it. But it almost seems like our organizational goal is inefficiency. Additionally, in the case of Hamdan, it certainly appeared that I was removed because I deemed the case "a mess." I thought, in telling you that I would support your decision to remove me, that you had a goal in mind (i.e. detail someone who can fix the case and get it ready without being faced by fire from CDR (b)(6) in the form of "you forget that I'm your boss."). When the person who had been sitting on the case for a year simply got it back (with no potential replacement counsel-except maybe an incoming Navy LT who "respects CDR (b)(6) superiority"), it showed me that our goal here is not to best serve the United States. You told me you knew he was defying your orders. You told me you knew I was in a sticky situation because he was the deputy and had been working the case for a long time, but you expected me to get the case ready. By the time I had read the portions of the case file CDR (b)(6) gave me, I was gone. And I'd bet money the case is in the same shape now as it was back then.

7. Appearance of Impropriety: I have felt quite uncomfortable with the numerous references you have made to personal contacts with an individual named (b)(6). I believe this person is a Navy O-6. You and CDR (b)(6) often refer to him as "the Presiding Officer," despite the fact that no PO has yet been chosen by the AA. In response to points raised regarding potential defense challenges, I often hear CDR (b)(6) say one of 2 things: 1. The defense will never think of/do that, or 2. (b)(6) won't let them go there. Discussions like these, in addition to knowledge that you have been sending things like the trial procedure guide to (b)(6) for his comments, make me very uncomfortable. Finally, when you say things like "these panels aren't going to acquit," or "the panel members are being carefully chosen" in response to concerns about how certain pieces of evidence will play, it leads me to question whether these proceedings will truly be fair.

(b)(6)

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

From: (b)(6) (b)(6) COL, DoD OGC

Sent: Monday, March 15, 2004 11:29

To:

(b)(6)

Cc: (b)(6)

Subject: Allegations of misconduct and unprofessionalism against Chief Prosecutor
Importance: High

All:

Please read below.

Capt. (b)(7) has made some serious allegations against me as the Chief Prosecutor---charges that, if true, mandate that I be relieved of my duties.

Among other things, Capt. (b)(6) insists that an "environment of dishonesty, secrecy, and deceit" exists within the entire office.

In an email preceding Capt. (b)(6) you will note that Maj. (b)(6) voices similar views: he states that he is "disgusted" with the "lack of vision" and "lack of integrity" in the office, and has "utter contempt" for many of the judge advocates serving with us.

Bottom line: Both Capt. (b)(7) and Maj. (b)(6) believe that what we are doing is so wrong that they cannot "morally, ethically, or professionally continue to be a part of this process."

I am convinced to the depth of my soul that all of us on the prosecution team are truly dedicated to the mission of the Office of Military Commissions---and that no one on the team has anything but the highest ethical principles. I am also convinced that what we are doing is critical to the Nation's on-going war on terrorism, that what we have done in the past---and will continue to do in the future---is truly the "right" thing, and that the allegations contained in these emails are monstrous lies.

It saddens me greatly that two judge advocates---whom I like very much and for whom I have only the greatest respect and admiration---think otherwise. In fairness to all of you, however, it is important that you read what has been written about me and you.

COL (b)(6)

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

From: (b)(6) CPT, DoD OGC

Sent: Monday, March 15, 2004 07:56

To: (b)(6) (b)(6) COL, DoD OGC

Cc: (b)(6)

Subject: RE: Meeting with Colonel (b)(6) and myself, 4:00 p.m, today, Col (b)(6) office

Sir,

I appreciated the opportunity to meet last Thursday night, as well as the frankness of the discussion. The topics covered and the comments made have been replaying in my mind since we ended the meeting. I have also reviewed Maj (b)(6) comments in his e-mail below, and I agree with them in every respect.

I feel a responsibility to emphasize a few issues. I do not think that our current troubles in the office stem from a clash of personalities. It would be a simple, common, and easily remedied situation to correct if this were true. People could be reassigned or removed.

It is my opinion that our problems are much more fundamental. Our cases are not even close to being adequately investigated or prepared for trial. This has been openly admitted privately within the office. There are many reasons why we find ourselves in this unfortunate and uncomfortable position - the starkest being that we have had little to no leadership or direction for the last eight months. It appears that instead of pausing, conducting an honest appraisal of our current preparation, and formulating an adequate prosecution plan for the future, we have invested substantial time and effort to conceal our

deficiencies and mislead not only each other, but also those outside our office either directly responsible for, or asked to endorse, our efforts. My fears are not insignificant that the inadequate preparation of the cases and misrepresentation related thereto may constitute dereliction of duty, false official statements, or other criminal conduct.

An environment of secrecy, deceit and dishonesty exists within our office. This environment appears to have been passively allowed to flourish, if it has not been actively encouraged. The examples are many, but a few include:

1. **CDR (b)(6) misrepresentations at the Mock Trial** - CDR (b)(6) made many misrepresentations at the Mock Trial, to include stating that we had no reason to believe that al Bahlul had suffered any mistreatment or torture. When I confronted him immediately after the mock trial with his notes to the contrary, he admitted that he was aware of abuse allegations related specifically to al Bahlul. Interestingly, it was because of Prof. (b)(6) comments at the mock trial that we even began to inquire into the conditions at the detention camps in AF, which prior to the mock trial had been consciously ignored. Other troubling aspects of the mock trial include, but are not limited to: statements that we would be ready for trial in 3 days, that al Bahlul has maintained from day one that he is a member of AQ, the deliberate and misleading presentation of select statements from al Bahlul, the careful coordination of the schedule to limit meaningful questions, the conscious inclusion of an overwhelming amount of paper in the notebooks, and the refusal to include a proof analysis.
2. **Suppressing FBI Allegations of Abuse at Bagram** - Over dinner and drinks (b) and Lt (b)(6) heard from FBI agents that detainees were being abused at the Bagram detention facility. Lt (b)(6) told (b) after dinner that they couldn't report the allegations because it was told to them "in confidence." (b) told CDR (b)(6) LtCol (b)(6) and (b)(6) anyway, and all three stated that there was not credible evidence and concluded on their own volition that they should not report the allegation to you or other members of the office. Interestingly, CDR (b)(6) recently suggested the Lt (b)(6) despite his lack of experience and judgment, be sent to review the CID reports of abuse at Bagram.
3. **Refusal to give Mr. Haynes the COLE video** - Mr. (b)(6) asked CDR (b)(6) twice for a copy of the COLE video. I heard CDR (b)(6) ask CDR (b)(6) whether she should take a copy of the video over to Mr. (b)(6). CDR (b)(6) told her not to, and that maybe in a few days Mr. (b)(6) would forget that he asked for it.
4. **The disappearance/destruction of evidence** - As I have detailed to you, my copy of CDR (b)(6) notes detailing the 302 in which al Bahlul claims torture and abuse is now missing from my notebook. The 302 can not be located. Additionally, (b)(6) of the FBI related last week that he called and to CDR (b)(6) about the systematic destruction of statements of the detainees, and CDR (b)(6) said that this did not raise any issues.
5. **"I've known about this for a year."** Hamden's name is on the UN 1267 list, and we only learned of it in Dec. When CDR (b)(6) was confronted with this information, he claimed that he had known about it for the last year. No attempt had been made prior to Dec to discover upon what evidence Hamdan was added to the list, and we still don't know. If he was aware of this fact, one is left to wonder why no inquiry was made with the State Department. He made the same "I've known about this for a year" claim about the Tiger Team AQ 101 brief, although he has had many of us searching for the information contained within it for months.
6. **CDR (b)(6) misrepresentations at the office overview of his case.** As detailed in a previous e-mail to you, CDR (b)(6) made numerous misrepresentations concerning his case at the office meeting to discuss his case, indicating that he either consciously lied to the office, or does not know the facts of his case after 18 months of working on it.

I have discussed each of these specific examples with you, and you told me that you had taken corrective action to some. For example, in reference to paragraph 2, I asked how I was suppose to trust these attorneys to review documents and highlight exculpatory evidence and you responded that "when the time comes" you would put out very direct guidance. I do not believe that ethical behavior is something that can be directed during selective time periods.

These examples are well known to the members of this office, yet there has been no public rebuke of the behaviors. Hence, the environment and behaviors continue to flourish. I am left to wonder why at an office meeting we were not told:

"I understand that misrepresentations are being made concerning the facts of our cases. If I find out this happens again, the responsible party is going to be fired."

"I understand that evidence is being withheld from our civilian leadership. If I find out this happens again, someone is going to be fired."

"I understand that allegations of abuse are not being brought to my attention or reported to the appropriate authorities. If I find out this happens again, someone is going to be fired."

"I understand that evidence is being hidden or destroyed. If I find out this happens again, someone is going to be fired."

Even in regards to CDR (b)(6) recent behavior towards Maj (b)(6) and myself, the office was not told the real reason for why he has been removed as the deputy, only further feeding the underlying animosity and indicating that the action was forced upon you and not really justified - if not, surely you would have taken a less conciliatory stance.

You stated in our meeting last week that what else can you do but lead by example.

In regard to this environment of secrecy, deceit and dishonesty, the attorneys in this office appear to merely be following the example that you have set.

A few examples include:

You continue to make statements to the office that you admit in private are not true. With many of the issues listed here, the modus operandi appears to be for you to make a statement at a meeting, pause, and when no one states a disagreement, assume that everyone is in agreement. To the listener, it is clear that the statements are not true, but we are not to correct, disagree, or question you in front of the office. (For example, when I asked you basic questions concerning conspiracy law at an office briefing, CDR (b)(6) called me into his office and told me that my conduct was borderline disrespectful because it put you in an uncomfortable position.)

You have stated for months that we are ready to go immediately with the first four cases. At the same time, e-mails are being sent out admitting that we don't have the evidence to prove the general conspiracy, let alone the specific accused's culpability. In fact, it may be questioned how we are in a better position to prove the general conspiracy today than we were last November at the mock trial. Of course, it should also be noted that we have substantially changed course even since November and now acknowledge that the plan to prove principal liability for TANBOM, KENBOM, COLE and PENTBOM was misguided to say the least.

We are rushing to put 9 more RTBs together for cases that you admit are not even close to being ready to go trial. We are also being pressed to prepare charge sheets, and you have asked that discovery letter go out on these cases. We are led to believe that representations are being made that these cases can be prosecuted in short order, when this simply is not true.

You told the AF generals that we had no indication that al Bahlul had been tortured. It was after this statement, which CDR (b)(6) quietly allowed to go uncorrected, that I brought up CDR (b)(6) missing notes to the contrary. You admitted to me that you were aware that al Bahlul had made allegations of abuse.

In our meeting with OGA, they told us that the exculpatory information, if it existed, would be in the 10% that we will not get with our agreed upon searches. I again brought up the problem that this presents to us in the car on the way back from the meeting, and you told me that the rules were written in such a way as to not require that we conduct such thorough searches, and that we weren't going to worry about it.

You state in a morning meeting that al Bahlul has claimed "in every statement" that he was an AQ member. When I told you after the meeting that this was not true, you simply admitted that you hadn't read the statements but were relying on what CDR (b)(6) had told you. As I have detailed in another e-mail, it does not appear that CDR (b)(6) is even aware of how many statements al Bahlul has made, let alone conducted a thorough analysis.

When Maj (b)(6) raises concerns about him advising the AA given the potential appearance of partiality, you advised him not to stop giving advice, but to only give advice orally.

CDR (b)(6) has emphasized at morning meetings, with you in the office, that we do not need to be putting so many of our concerns in e-mails and that we can just come down and talk. Given the disparity between what is said in causal conversation and the statements made by our leadership in e-mails, it is understandable that we have relied more and more on written communications.

You have repeatedly said to the office that the military panel will be handpicked and will not acquit these detainees, and we only needed to worry about building a record for the review panel. In private you have went further and stated that we are really concerned with review by academicians 10 years from now, who will go back and pick the cases apart.

We continue to foster the impression that CITF is responsible for our troubles and lack of evidence, although we have learned in the last few weeks that we haven't even sat down with the case agents to figure out what evidence they have and how they have gathered it. You acknowledged last week that we will not even try to fix the problems with CITF. What is perhaps most disturbing about the lack of by our investigative agents is that it does not appear we have ever adequately explained the deficiencies to the CITF leadership.

Our morning meetings, briefings, and group discussions are short and superficial - it could be argued designed to permit a claim that the office has discussed or debated a certain topic without permitting such meaningful discussions to actually take place. Two prosecutors were scheduled 15 minutes each to go over the facts of their case. Charge sheets are reviewed by the office the afternoon that they are to be taken over to the Deputy AA. The lay down on the general conspiracy is cursory and devoid of meaningful comments or suggestions. The fact that we did not approach the FBI for assistance prior to 17 Dec - a month after the mock trial - is not only indefensible, but an example of how this office and others have misled outsiders by pretending that interagency cooperation has been alive and well for time, when in fact the opposite is true.

It is claimed that the Tiger Team didn't do "shit" when in fact many of the products (i.e., AQ 101 and the statement of predicate facts) that they put together almost two years ago closely mirror products that taken us months to put together. In fact, even a cursory review of the Tiger Team materials we now (after several efforts to get them were sharply rebuffed by our own staff) shows that the Tiger Team had articulated many of the obstacles we now face and had warned that if these obstacles were not removed that prosecutions could not succeed.

As part of this atmosphere that you fostered, Maj (b)(6) was publicly rebuked for bringing this issue to the group's attention and you specifically stated that you had reviewed the tiger team materials, there was little if any usable material in them, and that the demise of the tiger team had been the result of an unfortunate personality clash and nothing else. A review of the files shows otherwise.

From June to December, you were only present in the office for brief periods, often less than 4 hours every two weeks. However, you continued to insist that CDR (b)(6) spoke for you and directed those who e-mailed you with concerns to address them with CDR (b)(6). It is difficult to believe that his deficiencies were unknown at that time, and consequently it is difficult to believe that you were unaware of the fact we had little to no direction during that time frame. The fact that he directed each of us in the office not to speak to you directly was, and remains to me, astonishing - but does permit one to argue that they were unaware of any difficulties during a critical period of this endeavor.

One justification for the concealment and minimization of the problems has been the often stated proposition that MG Altenburg will be able to remedy many of these problems when he becomes the

Appointing Authority. However, you have recently stated that MG Altenburg is a good friend of yours, that you hope he will be heavily reliant on BG Hemingway for a period of time, and that we will not be forwarding any documentation of cases (e.g. proof analysis) to MG Altenburg which suggests that he will not be in a position to exercise independent judgment or oversight.

It is my opinion that the primary objective of the office has been the advancement of the process for personal motivations – not the proper preparation of our cases or the interests of the American people.

The posturing of our prosecution team chiefs to maneuver onto the first case is overshadowed only by the zeal at which they hide from scrutiny or review the specific facts of their case - thereby assuring their participation.

The evidence does not indicate that our military and civilian leaders have been accurately informed of the state of our preparation, the true culpability of our accuseds, or the sustainability of our efforts.

I understand that part of the frustration with Maj. (b)(6) discussions with BG Hemingway was that you did not have the opportunity to discuss the matters with him in the first instance. It was clear from the discussions with BG Hemingway that he was unaware of the lack of preparation with our cases prior to signing the charges, or many of the other problems that we have discussed.

You have stated that you are confident that if you told MG Altenburg that we needed more time that he would give it to you. Underlying this comment is the fact that MG Altenburg has not been made aware of the significant shortcomings of our cases and our lack of preparation and cooperation with outside agencies.

I also have significant reason to believe that Mr. (b)(6) has not been advised in the most accurate and precise way. It appears that even the results and critiques of the mock trial, described like so many other efforts in this office as a "home run," were manipulated to present the maximum appearance of endorsement (for example, the reorganization and bold-face in Lt Col. (b)(6) critique that was openly discussed in the office)

We originally alleged that the accuseds were responsible as principles for 9/11, the COLE and the embassy bombings. Additionally, we alleged that al Qosi was involved with Mubarak and that al Bahlul was aware of Atta and Jarrah, and was somehow linked to a 9/11 meeting in Malaysia. I understand that significant policy decisions have yet to be vetted with DOJ OLC, and that they appeared less than totally comfortable with our theory of liability and culpability of the accuseds.

The comments we have heard in the office appear to revolve around one goal - to get the process advanced to the point that it can not be turned off. We are told that we just need to get defense counsel assigned, because then they can't stop the process and we can fix the problems. We just need to get charges approved because then they can't stop the process and then maybe we can fix the problems.

If the appropriate decisionmakers are provided accurate information and determine that we must go forward on the path we are currently on, then all would be very committed to accomplishing this task. However, it instead appears that the decisionmakers are being provided false information to get them to make the key decisions, to only learn the truth after a point of no return.

It is at least possible that the appropriate officials would be more concerned about approving charges, arraigning accuseds, and signing more RTBs prior to the arguments in front of the Supreme Court if they knew the true state of the cases and the position they will be left in this fall.

[It is also unclear how the steadfast refusal to have the prosecutors co-located with the CITF agents is in the interests of the American people or the preparation of the cases, and could be motivated by anything but a purely personal issue with someone involved in the process. You have admitted that both organizations productivity would be greatly increased.]

To address at least some of the underlying issues, the following may be proposed:

1. After fully informing the sages or invitees to the Mock Trial of the deficiencies we now acknowledge, solicit their recommendations and suggested courses of action.
2. Before MG Altenburg signs in -- taking on the AA responsibility and further damaging his lucrative private practice -- fully and accurately brief him on the status of our cases, our theories of liability, and the likely timetable in which we would be able to prepare cases after al Bahlul and al Qosi.
3. Fully and accurately brief Mr. (b)(6) and DOJ on the status of our cases, our theories of liability, and the likely timetable in which we would be able to prepare cases after al Bahlul and al Qosi.
4. Take immediate action within the office to develop a comprehensive prosecution strategy.
5. Take immediate action within the office to establish an environment that fosters openness, honesty, and ethical behavior.
6. Replace current prosecutors with senior experienced trial litigators capable of maintaining objectivity while zealously preparing for trial.

Instead, what I fear the reaction to Maj (b)(6) and my concerns will simply be a greater effort to make sure that we are walled off from the damaging information - as we are aware has been attempted in the past.

I would like to conclude with the following -- when I volunteered to assist with this process and was assigned to this office, I expected there would at least be a minimal effort to establish a fair process and diligently prepare cases against significant accused. Instead, I find a half-hearted and disorganized effort by a skeleton group of relatively inexperienced attorneys to prosecute fairly low-level accused in a process that appears to be rigged. It is difficult to believe that the White House has approved this situation, and I fully expect that one day, soon, someone will be called to answer for what our office has been doing for the last 14 months.

I echo Maj (b)(6) belief that I can not morally, ethically, or professionally continue to be a part of this process. While many may simply be concerned with a moment of fame and the ability in the future to engage in a small-time practice, that is neither what I aspire to do, nor what I have been trained to do. It will be expected that I should have been aware of the shortcomings with this endeavor, and that I reacted accordingly.

v/r,

Capt (b)(6)

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

From: (b)(6) MAJ, DoD OGC
Sent: Thursday, March 11, 2004 16:19
To: (b)(6) CAPT, DoD OGC
Cc: (b)(6) (b)(6) COL, DoD OGC
Subject: RE: Meeting with Colonel (b)(6) and myself, 4:00 p.m. today, Col (b)(6) office

Ma'am

While I appreciate the sentiment, I have to tell you that I don't see a lot of use continuing to talk about this stuff, unless your looking at reassigning us out of this office. I don't intend to speak for (b)(6) although I know he feels the same way, but for me I sincerely believe that this process is wrongly managed, wrongly focused and a blight on the reputation of the armed forces. I don't have anything knew to say. I am pretty sure that everyone in the world knows my sentiments

about this office and this process.

Certainly there have been some unfortunate symptomatic issues like Cdr (b)(6) recently heightened animosity towards (b)(6) (and I'm not going to let that one go either), but my fundamental concerns here have nothing to do with personality conflicts or intellectual disagreements.

I don't think that anyone really understands what our mission is, but whatever we are doing here is not an appropriate mission. I consider the insistence on pressing ahead with cases that would be marginal even if properly prepared to be a severe threat to the reputation of the Military Justice System and even a fraud on the American people - surely they don't expect that this fairly half-assed effort is all that we have been able to put together after all this time.

At the same time, my frank impression of my colleagues is that they are minimizing and/or concealing the problems we are facing and the potential embarrassment of the Armed Forces (and the people of the United States) either because they are afraid to admit mistakes, feel powerless to fix things, or because they are more concerned with their own reputations than they are with doing the right thing. Whether I am right or wrong about that, my utter contempt for most of them makes it impossible for me to work effectively.

Frankly, I became disgusted with the lack of vision and in my view the lack of integrity long ago and I no longer want to be part of the process - my mindset is such that I don't believe that I can effectively participate - professionally, ethically, or morally.

I lie awake worrying about this every night. I find it almost impossible to focus on my part of the mission - after all, writing a motion saying that the process will be full and fair when you don't really believe it will be is kind of hard - particularly when you want to call yourself an officer and a lawyer. This assignment is quite literally ruining my life.

I really see no way to fix this situation other than reassignment. I don't want to be an obstacle to anyone, but I'm not going to go along with things that I think are wrong - and I think this is wrong. It's not like I'm going to change my opinion in order to "go along with the program." I'm only going to persist in doing what I think is right and at some point that is going to lead to even harder feelings. Half the office thinks we are traitors anyway and frankly I think they are gutless, simple-minded, self-serving, some, or all of the above so you can see how that's going to go...

I know even well-meaning people get tired of hearing this, but the fact is that I really can't stomach doing this and I really don't want to waste time talking about it.

PS: (b)(6) not back yet. I think he was at FBI this afternoon.

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

From: (b)(6) CAPT, DoD OGC
Sent: Thursday, March 11, 2004 13:36
To: (b)(6) MAJ, DoD OGC; (b)(6) CPT, DoD OGC
Cc: (b)(6) (b)(6) COL, DoD OGC
Subject: Meeting with Colonel (b)(6) and myself, 4:00 p.m. today, Col (b)(6) office

Major (b)(6) and Captain (b)(6)

Captain (b)(6) and I had a long talk this morning. Based on his expressions of concern for some unresolved issues, including both ethical matters and personal treatment of the Air Force lawyers, I have asked the Colonel to meet with us all this afternoon. This is meant to be an open and frank exchange, and a chance to put everything on the table for full discussion.

VR/R

(b)(6)

Capt, JAGC, USNR
Office of Military Commissions

(b)(6)

(b)(6)

Col AF/JA

From:

(b)(6)

MAJ, DoD OGC

Sent:

Tuesday, March 09, 2004 4:57 PM

To:

(b)(6)

Col AF/JA

Sir

Don't know if you remember that we finally "cracked the code" with respect to getting access to some of the Army Tiger Team's materials after much acrimony and debate.

I now have access to a few CDs worth of material - thought you would be interested in this particular gem - I find it highly ironic...



MC-First Cases_doc

No more emails today - I promise...

(b)(6)

Major, USAF

Department of Defense, Office of the General Counsel

Office of Military Commissions, Prosecution

1931 Jefferson Davis Highway

Suite 532, Arlington, VA 22202

Phone: (b)(6)

Fax: (b)(6)

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(b)(6) Col AF/JA

From: (b)(6) MAJ, DoD OGC
Sent: Tuesday, March 09, 2004 2:06
To: (b)(6) Col AF/JA
Subject: FW: my departure
Sir

You know the only reason you are getting all these is that I told you I was sure I could keep the emails down to one a day or so...

v/r

(b)(6)

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

From: (b)(6) CPT, DoD OGC
Sent: Tuesday, March 09, 2004 14:00
To: (b)(6) (b)(6) COL, DoD OGC
Cc: (b)(6) CAPT, DoD OGC
Subject: my departure

Sir,

I recently spoke with CAPT (b)(6) regarding the upcoming (11 Apr 04) expiration of my orders. As I told her, am asking that the Air Force assign me to an alternate unit effective 12 Apr 04.

I know you are personally aware of my many concerns regarding our execution of the mission, organizational integrity and functioning as a team. It is those concerns that form the basis for my request for reassignment. I don't feel I can best serve the United States in this environment.

(b)(6)

(b)(6)

Col AF/JA

From:
Sent:
To:

(b)(6)

MAJ, DoD OGC

Monday, March 08, 2004 7:46 AM

(b)(6)

Col AF/JA

Sir,

I will try to keep the emails down to a dull roar this week, but a few concerns that I couldn't get into Friday night.

1. The Marine 0-5s told me that their legal advisor to the Commandant has emailed them and requested to know "why the Air Force has a problem with the Marines and why the AF is saying the Marines are screwed up." Sounds like somebody is casting this as an interservice namecalling event, but on our peon level, I believe the Marines are attributing it to (b)(6) and I as being responsible for the original leaks that led to questions by their people.

2. I went ahead and confronted (b)(6) about opening his big mouth with Cdr (b)(6) - (b)(6) was extremely frightened (I think because he thought I would rat him out to the AF). He told me that it was (b)(6) that had initiated the contact and that (b)(6) had then asked him what his (b)(6) opinion was of (b)(6). I think in part to justify his conversation with (b)(6) told me that he had heard from "other people" that there were problems with (b)(6) and he related to me that he had heard that (b)(6) had been disrespectful to (b)(6) had walked out on him and then been counseled for his conduct. This is the BS issue that I told you about some weeks back. While I realize that the AF would think this issue is complete nonsense, I worry about it because it is clear that our opponents here cannot find a means of attacking (b)(6) on the merits so they are attempting to run him down through other means. You know how such issues can have a life of their own and no one is quelling this one. Col (b)(6) was present for this alleged disrespectful behavior and didn't say a word. From talking with (b)(6), I think it is particularly interesting that (b)(6) actually encouraged (b)(6) to chastise (b)(6). So (b)(6) is really encouraging this environment and this is now the fourth or fifth person I have heard relate this story about (b)(6) behavior.

3. I talked with our new deputy Navy Capt (b)(6) - she was told 30 min before she was appointed the deputy that she would be the new deputy, but she was not told why (other than a statement that (b)(6) needed to be able to focus on his case). There was absolutely no acknowledgment either to her or to the group as to why we really needed a new deputy. The (b)(6) supporters nevertheless see this as a slight of Cdr (b)(6) and they blame us.

On the good side, I did get a pretty good parking spot this morning.

(b)(6)

Major, USAF

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(b)(6)

Col AF/JA

From: (b)(6) MAJ, DoD OGC
Sent: Monday, March 01, 2004 5:41 PM
To: (b)(6) Col AF/JA
Cc: (b)(6) CPT, DoD OGC
Subject: Lunch at the Army Navy Club

Sir

Followup conversation with BG Hemmingway today during the trip over and then an hour long lunch at the Army Navy club. He emphasized to me that this was supposed to be "away from prying eyes," which I took to mean that Col (b)(6) and Cdr (b)(6) weren't supposed to know about it.

1. He clearly believed there was a lapse of security and he was very interested in finding out who had talked to TJAG. In fact, his first comment was "someone has obviously been talking to TJAG's office" or words to that effect. I told him that it wasn't necessarily someone going to TJAG - that the office had made a relatively poor showing during the TJAG briefing that may have raised some concerns - while that may have been at least partially a fib, didn't want to rat anyone out either.

2. He also told me that he had to brief Mr (b)(6) in preparation for a mtg w/ the SECDEF, TJAG, Ms (b)(6) and Mr (b)(6) - said he needed to know if there were any problems. I laid it out for him in great detail, but on at least on some points he was fairly unreceptive - particularly as it related to quality of evidence in our possession and proof problems.

3. He clearly had an agenda of attempting to validate the theory of liability. He claimed that TJAG has been talking to the other TJAGs about the conspiracy theory of liability and expressed concerns that this just wouldn't work. BG Hemmingway stated that he had run the charge sheet by (b)(6) and (b)(6) and that both had made positive comments about the charge sheet. My efforts to try to explain to him the difference between the possibility of proving the case in theory and proving the case in fact with these fairly low level actors were unsuccessful. The key problem here is that (b)(6) and (b)(6) don't have access to the actual evidence in the first few cases and likely don't realize the problems attendant in proving up a vast conspiracy by a compartmentalized and fragmented organization - their perspective is the war crimes tribunal prosecutions where there are widespread atrocities openly committed by organized groups known to a significant number of witnesses and the offenders are physically present at the scene (aka the Serbian Army).

4. He was receptive as to the management problems and the total failure of the management during Cdr (b)(6) solo tenure. When I expressed the lack of candor (or outright dishonesty) exhibited by the Chief and Deputy, he seemed at a loss as to how to deal with it. I also emphasized that management issues aside, these horses weren't going to be able to get the job done on the first 2 cases. He clearly agreed that this was a problem, but stated that it would be impossible at this stage to remove the lead counsels (at least (b)(6))

5. He told me that he knew (b)(6) was planning on leaving and wondered if she was one of the ones complaining. I avoided talking about what I knew about her departure, but suggested that she had witnessed firsthand many of the case preparation problems and that she was frustrated by the dishonesty and double dealing exhibited by Col (b)(6) in addressing the problems - particularly on Hamden (the driver case).

6. He was also not very receptive to the appearance of fairness problems. In particular, he doesn't seem to understand why his designation as the deputy appointing authority is going to be viewed unfavorably. I urged him that the only way to fix any of the appearance problems would be for BG Hemmingway to recuse himself from the first few cases and bring MG Altenberg in to review the charges and case files and make his own independent determination, but it seems clear that BG Hemmingway doesn't think this can happen.

7. BG Hemmingway seemed very concerned with internal personnel issues and although I repeatedly tried to broach the topic, did not seem to want to talk about the big picture items like the problems with mission prioritization (i.e. intel over everything). I reengaged with him this afternoon via email regarding lack of command authority and inability to direct movement or compliance from our "supporting" agencies.

In sum, BG Hemmingway seemed floored by the depth of the problems and did not exhibit a willingness or perhaps the ability to address deepseated issues. My concern is that he feels powerless to address the systemic problems and is seeking ways to make cosmetic fixes.

As usual, we remain at your disposal should you need any further info.

v/r

(b)(6)

(b)(6)

Major, USAF

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(b)(6)

Col AF/JA

From: (b)(6) MAJ, DoD OGC
Sent: Friday, February 27, 2004 9:32 AM
To: (b)(6) Col AF/JA



OMC Reorg Paper.doc



OMC Reorg Powerpoint.ppt

Hey sir,

These are some notions I have been fooling with for some time - you have a paper copy of the first document, but the one included here has been revised and includes some recommendations at the end

Don't know if it is useful to you or not, but perhaps at least a memory jogger.

I could do a lot better with the powerpoint if I understood what the intel relationship is, but I really can't quite figure it out. The big thing I'm trying to show there is that a purple commander has the ability to prioritize missions and resolve conflicts where a DoD level agency does not the same ability without having to run to the SECDEF on a regular basis.

v/r

(b)(6)

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