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REPORT OF INVESTIGATION

██████████-29-MAR-2004-60DC-Z1/U

April 30, 2004

PROJECT: MILCOM

DISTRIBUTION

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NARRATIVE

1. This project was initiated to investigate allegations of potential criminal conduct by members of the Office of the Chief Prosecutor (OCP), Department of Defense (DoD) Military Commissions. The Military Commissions were established to prosecute individuals subject to the President's Military Order dated November 13, 2001. Department of Defense Military Order No. 1, dated March 21, 2002, establishes the procedures for trials by Military Commissions of certain non-United States citizens in the war against terrorism. The allegations of potential criminal conduct included: false statements, suppression or destruction/disappearance of evidence, dereliction of duty, and conduct unbecoming an officer. Exhibit 1 is the case initiation.
2. A DCIS investigative team was formed to investigate reports of potential violations of the Uniform Code of Military Justice (UCMJ) in the OCP as initially detailed in e-mails written by three U.S. Air Force (USAF) judge advocates assigned to the OCP. The investigative team consisted of six DCIS special agents ([REDACTED] and a manager (Assistant Special Agent in Charge [REDACTED]). An investigative plan was developed to interview members of the Operational Assessment Team (OAT) and the Office of the Military Commissions (OMC), and other individuals with pertinent information as developed during the course of the investigation. Team members were also instructed to document potential unethical (not necessarily criminal) conduct and to report any non-criminal investigative findings and issues that might assist the OMC.
3. [REDACTED] U.S. Marine Corps (USMC), Washington, DC, was interviewed regarding his participation in the OAT task to examine the structure and process of the Office of the Chief Prosecutor of the OMC. [REDACTED] indicated that Mr. William Haynes, General Counsel of the DoD, appointed him. [REDACTED] stated that the OAT conducted interviews of OMC personnel in Crystal City, VA, and of [REDACTED] USAF, at the Pentagon. [REDACTED] related that interviewees were allowed to read the OAT appointment letter to help them understand the scope and purpose of the interviews. [REDACTED] advised that the OAT strictly focused on the issues of the structure and process of the OCP and not criminal allegations or ethical conduct when interviewing OMC personnel. [REDACTED] related that OAT members took their own notes and [REDACTED] USAF, recorded the proceedings. Exhibit 2 sets forth details of the [REDACTED] interview.
4. [REDACTED] USAF, Washington, DC, was interviewed regarding her participation in the OAT. [REDACTED] related that she was the recorder for the OAT. [REDACTED] stated the OAT conducted interviews of OMC personnel in Crystal City. [REDACTED] indicated that all interviews were completed in one day. [REDACTED] advised that prior to each interview, Brigadier General (BG) Black (Black), U.S. Army, greeted each interviewee and allowed them to read the OAT appointment letter to help them understand the scope and purpose of the interview. [REDACTED] related that the OAT strictly focused on issues of structure and not

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criminal allegations when interviewing OMC personnel. [REDACTED] stated she suspected that criminal investigative matters would be handled by another entity. [REDACTED] indicated that the OAT members took their own notes and believes [REDACTED], U.S. Navy, took custody of the notes for safekeeping. Exhibit 3 sets forth details of the [REDACTED] interview.

5. [REDACTED] U.S. Navy (USN), Washington, DC, was interviewed regarding her participation in the OAT. [REDACTED] related that she participated in the OAT during March 17-19, 2004. She indicated the OAT focused on the various complaints in the series of e-mails regarding the lack of support, the procedures that were being used, and the issues the military prosecutors were facing. [REDACTED] stated that the OAT basically "keyed off" the e-mail complaints, but did not focus on any criminal or ethical misconduct. [REDACTED] categorized the concerns of the interviewees as follows: (1) lack of interagency support and cooperation with Commissions, (2) lack of support within the DoD, and (3) the functioning of the Office of Military Prosecutor (OMP). [REDACTED] referred that a number of people were concerned with the "poisonous atmosphere" created by three U.S. Air Force officers: [REDACTED] and [REDACTED]. Exhibit 4 sets forth details of the [REDACTED] interview.

6. [REDACTED] U.S. Navy Reserve (USNR), Arlington, VA, was interviewed regarding her participation in the OMC. [REDACTED] indicated that she is a full-time Assistant U.S. Attorney with the U.S. Attorney's Office, [REDACTED]. [REDACTED] related that she also served as a [REDACTED] for the U.S. Navy. [REDACTED] stated that she is currently the [REDACTED] with OMP. [REDACTED] indicated she was working for [REDACTED] USAF, on the OMP discovery team. [REDACTED] opined that allegations made by [REDACTED] were not correct, but were likely made as a result of personality conflicts within the OMC. [REDACTED] indicated that research conducted by an analyst assigned to the OMC resulted in the discovery of a Federal Bureau of Investigation (FBI) form 302, which referenced a videotaped interview of an Al-Qaeda suspect. [REDACTED] related that OMC personnel were previously advised that Al-Qaeda suspects were not taped. [REDACTED] advised that her office was currently seeking more information detailing the circumstances surrounding the tape. [REDACTED] also learned the Guantanamo Navy Base (GTMO) Staff Judge Advocate (SJA), identified as [REDACTED] U.S. Army (USA), had reportedly been uncooperative with the OMP regarding delivery of charges to Al-Qaeda suspects. [REDACTED] indicated that the uncooperativeness of the SJA resulted in the OMP having to fly personnel into GTMO from Arlington, VA, to facilitate the service of charges. Exhibit 5 sets forth details of the [REDACTED] interview.

7. [REDACTED], U.S. Army, Arlington, VA, was interviewed regarding his participation in the OMC. [REDACTED] indicated he was the legal administrator for the OMC and was not interviewed by the OAT. [REDACTED] related that he is not aware of any criminal or unethical conduct on the part of OMC personnel. [REDACTED] stated he was aware of [REDACTED]

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[REDACTED]

[REDACTED] stated that he referred DPS to [REDACTED] USN, who had [REDACTED] and subsequently handled the problem. [REDACTED] related that he was not aware if any classified information [REDACTED] at the time of the alarm activation. [REDACTED] indicated that subsequent to the alarm activation; the OMC implemented a policy that only allowed field grade officers to [REDACTED] Exhibit 6 sets forth details of the [REDACTED] interview.

- 8. [REDACTED] USN, Arlington, VA, was interviewed regarding his participation in the OMC. [REDACTED] related that during January 2004 he traveled to Panama City, Florida, accompanied by [REDACTED] OMC, and [REDACTED] Naval Criminal Investigative Service (NCIS), to interview a suspect. [REDACTED] advised that during the Florida visit, they met Task Force Officers (TFO) [REDACTED] New York City Detective, and [REDACTED] (ph), FBI, [REDACTED] to facilitate the interview. [REDACTED] stated that his group had dinner with the TFO and noted that both TFO consumed generous amounts of wine during dinner. [REDACTED] indicated he was informed by TFO regarding their observations while in Bagram during the early part of the conflict in 2002. [REDACTED] related that [REDACTED] was deployed to Bagram and witnessed the processing of detainees. [REDACTED] was informed by [REDACTED] regarding the witnessing of body cavity searches conducted by an unknown individual (UI), who may not be part of the process. [REDACTED] advised that UI wanted [REDACTED] to take a picture of him conducting an anal body cavity search of a detainee. [REDACTED] related that [REDACTED] reportedly refused to take the picture, but noted that the UI vacated the area after stating he was not a doctor. [REDACTED] indicated that [REDACTED] observed detainees departing the area with feces running down their legs and appearing to be in pain. [REDACTED] stated that he and [REDACTED] reported the mentioned observations of [REDACTED] the next day to [REDACTED] USMC, [REDACTED] USMC, and [REDACTED] USN. [REDACTED] indicated that allegations made by [REDACTED] U.S. Air Force regarding the suppression of mentioned observations are completely false. Exhibit 7 sets forth details of the [REDACTED] interview.

- 9. [REDACTED] USAF Reserve (USAFR), Arlington, VA, was interviewed regarding his participation in the OMC and allegations made by [REDACTED]. [REDACTED] related that he accompanied [REDACTED] and [REDACTED] NCIS, on a trip to Panama City, Florida, to interview a suspect. [REDACTED] indicated TFO [REDACTED] and [REDACTED] (Ph) had been drinking when they relayed the story of possible mistreatment at Bagram. [REDACTED] mentioned the discussion he had with [REDACTED] on their concerns about damaging relations with the FBI if they reported the incident. [REDACTED] referred that a full briefing of the possible mistreatment was provided to [REDACTED] and [REDACTED] upon his return from the trip. [REDACTED] stated that [REDACTED] U.S. Army, was briefed on the possible mistreatment approximately one month later. [REDACTED] advised that after briefing [REDACTED] the information was forwarded to the Criminal Investigation Task Force (CITF)

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representative [REDACTED] NCIS. [REDACTED] referred that he had no knowledge of unethical or criminal conduct committed by OMC personnel. [REDACTED] mentioned that [REDACTED] actions might be viewed as unethical if he had sent blind copies of allegations via e-mail messages outside OMC channels. [REDACTED] opined that [REDACTED] was off base and seems to be angry because his opinions and ideas are not being accepted or implemented by senior personnel assigned to OMC. Exhibit 8 sets forth details of the [REDACTED] interview.

10. [REDACTED] USMC, Fort McNair, Washington, DC. In January 2002, [REDACTED] was assigned as a special advisor to the DoD General Counsel, working for Mr. Haynes, General Counsel, and Mr. Paul W. (Whit) Cobb, Deputy General Counsel. [REDACTED] was tasked with drafting the rules for military commissions in preparation for trials of subjects captured in the war on terrorism. [REDACTED] organized an inter-service working group, and basically set up the OMC. He played a role in "hiring" or selecting the original prosecutors assigned to the OMC, by identifying and recommending military prosecutors from the military services. Initially, [REDACTED] was designated as the acting [REDACTED] a position he held until approximately [REDACTED] when [REDACTED] replaced him. [REDACTED] did not have any direct interaction or association with the OMC or its members, except for occasional social events and periodic phone calls or e-mails with [REDACTED]. [REDACTED] was not a recipient of the e-mails authored by [REDACTED] and [REDACTED] nor did he actually know that they wrote them; however, he became aware of the general content of the e-mails from Mr. Cobb, [REDACTED] (Public Affairs Officer, DOD-OGC), and MG John Altenburg (recently designated as Appointing Authority, OMC). [REDACTED] did not have any knowledge of the specific allegations brought up in the e-mails. [REDACTED] described [REDACTED] as a highly optimistic individual who often "shoots from the hip." In November 2003, [REDACTED] served as an observer to the mock trial that was conducted by OMC. [REDACTED] provided substantive critiques to the process. [REDACTED] has no knowledge of any destruction of evidence involving OMC, nor can he see any motivation to do so. Regarding the status of the trials, [REDACTED] believed that one or more of the detainees should have been tried by now, although he acknowledges that many external factors have caused delays and lack of focus. Exhibit 9 sets forth details of the [REDACTED] interview.
11. [REDACTED] USMC, [REDACTED] OCP, OMC, was interviewed regarding his participation in the OMC. [REDACTED] reported to the OCP in August 2003. [REDACTED] described the most daunting challenge facing the OCP with respect to prosecuting terror suspects is the lack of interagency cooperation. [REDACTED] provided numerous examples where the OCP requested information relevant to their prosecution effort from the FBI, CIA, DOJ, and Defense Intelligence Agencies, and the requests were either unanswered or were not addressed in a timely manner. [REDACTED] refuted the assertion in [REDACTED] e-mail that alleged suppression of FBI allegations of abuse of detainees at the Bagram Detention Facility. [REDACTED] e-mail related that FBI Agents in Panama City, Florida, had told two members of the OCP that detainees in the Bagram Detention Facility had allegedly been abused, and that the two OCP members "couldn't report (to [REDACTED]) the allegations because it was told to them in confidence." [REDACTED] provided e-mails and documentation that illustrated the abuse

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allegations were reported to [REDACTED] and the U.S. Army Criminal Investigation Command (USACIDC) for further investigation. Exhibit 10 sets forth details of the [REDACTED] interview.

12. [REDACTED] USAFR, Arlington, VA, was interviewed regarding her participation in the OMC. With regard to her e-mail dated March 15, 2004, [REDACTED] provided the following information. The moot court referenced within her e-mail was essentially a mock trial whereby a number of "sages" (individuals of repute within the legal community, including [REDACTED] (ph) of the [REDACTED] and [REDACTED] from Harvard University) were invited to witness and critique prosecution efforts. The purpose of the mock trial was to assess whether one of the detainee investigations should be the first case litigated by OMC. According to [REDACTED] the moot court was an embarrassment and simply staged for show. [REDACTED] reportedly commented that the input provided by the sages was not important. [REDACTED] was assigned as co-counsel relative to the case, and indicated to her that [REDACTED], USN, had not discussed the case with [REDACTED] for months prior to the mock trial taking place. [REDACTED] stated that [REDACTED] made misrepresentations to sages during discussions of a detainee case in stating that the investigation was "clean," and that there were no allegations of abuse levied by a detainee. She alleged that a detainee had claimed that he had been abused while held at GTMO, contrary to [REDACTED] claims. [REDACTED] allegedly possessed documents (possibly a FBI 302, or other interview record) confirming the fact that a detainee claimed to have been abused, but allegedly these documents subsequently disappeared from one of [REDACTED] investigative folders. [REDACTED] alleged that [REDACTED] falsely represented that a detainee had always maintained that he was a member of al Qaeda; when in fact, the detainee has denied being a member of Al-Qaeda in the past. She claimed that [REDACTED] misrepresented the status of the case when he informed the sages that OMC was ready to prosecute a detainee case, when in fact, the prosecution team was not ready to proceed.

Allegations of abuse at Bagram found in her e-mail refer to the fact that while on TDY, FBI agents had informed [REDACTED] and [REDACTED] that detainees at Bagram had claimed that interrogators had placed their fingers in the anal cavities of detainees. [REDACTED] did not feel that the issue required further investigation, and stated that the drunken statements of two FBI agents did not constitute a "prima facie" case. When the issue came up at a later date as a result of press scrutiny of subsequent alleged detainee abuse, [REDACTED] stated that he could not recall discussing the Bagram abuse issues in the past.

With regard to issues pertaining to "13224" referenced in the e-mail, she explained that '13224' is a list maintained by either the United Nations and/or the U.S. Department of the Treasury that lists individuals whose assets are to be frozen due to a potential terrorism nexus. [REDACTED] identified the fact that one of the detainees, who is the subject of a potential OMC prosecution, was on the list as a result of [REDACTED]. The White House felt the issue was important enough to make inquiries, and asked that OMC keep staff members apprised of developments. [REDACTED] allegedly made statements that he could not understand why the issue was so important, and that he

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was aware of the issue for over a year prior to ██████████ making his discovery. ██████████ also allegedly failed to follow up on the issue at a later date.

With regard to comments relative to "fueling fires of hostility within the office," ██████████ claimed that ██████████, ██████████ and others allowed an organizational culture to exist whereby constant criticism of some officers (specifically ██████████) was ignored if not encouraged.

██████████ alleged that ██████████ was acting contrary to ██████████ directives relative to OMC policies. Specifically, claims that ██████████ failed to adhere to ██████████ decision that certain outside contacts needed to be coordinated with Task Force Discovery (via ██████████), and that ██████████ periodically violated this requirement and/or requested others at OMC sidestep the requirement.

With regard to statements pertaining to "appearance of impropriety," ██████████ stated that she and others within OMC question whether OMC can meet the President's Military Instructions, which call for a fair and impartial commission when ██████████ maintains a personal relationship with ██████████ who will reportedly function as the ██████████ relative to commissions. She alleged that ██████████ has shared trial procedure guides (essentially a roadmap of the prosecutions trial game plan) with ██████████ Statements by ██████████ and ██████████ relative to ██████████ and potential Commission panel members have caused ██████████ to fear that OMC is more concerned with merely "going through the motions," versus ensuring fair and impartial proceedings take place. She alleges that these activities could give the impression that the results of pending commissions are "rigged." Exhibit 11 sets forth details of the ██████████ interview.

- 13. ██████████ NCIS, CITF, Ft. Belvoir, VA. ██████████ indicated he was a former ██████████ and has been a Special Agent with NCIS since 2001. ██████████ stated he has been assigned to the CITF for approximately seven months. ██████████ acknowledged he traveled to Florida and met with ██████████ and ██████████ of the OMC for the purpose of interviewing a suspect. He further advised that during the trip, he, ██████████ and ██████████ had dinner with two FBI representatives at a local restaurant. When questioned about the content of the conversations, ██████████ stated he did not recall all of the specifics. However, he acknowledged that one of the FBI representatives was telling war stories regarding a person who was conducting rectal examinations on detainees in Afghanistan. ██████████ stated he believed the person might not have been a doctor. However, he advised that he does not recall if abuse was discussed. ██████████ further advised that he did not know if the FBI representatives were discussing something they witnessed or just talking about scuttlebutt. He further advised that he does not recall the names of the FBI representatives but stated he did not believe they were intoxicated during dinner. He also stated he is not aware of any information regarding abuse of detainees, or unethical or criminal conduct on the part of OMC personnel. Exhibit 12 sets forth details of the ██████████ interview.

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14. [REDACTED] USAF, OMC, advised that he reported to the OCP of the OMC in September 2003. He related that he immediately raised numerous operational concerns to [REDACTED] about how the OCP was preparing to go to trial. [REDACTED] background and specialty is International Law. [REDACTED] stated he was repeatedly told by [REDACTED] and [REDACTED] that the OCP was ready to go to trial on three days notice. This assertion was briefed repeatedly to various DoD decision and policy makers. [REDACTED] refuted this assertion. He stated that the OCP is not currently prepared to adequately prosecute cases. According to [REDACTED], a "due diligence" effort on part of the OCP had not been sufficiently pursued to locate all relevant evidence pertaining to the prosecution of the detainees. Regarding the statement in [REDACTED] e-mail which read "Additionally, [REDACTED] of the FBI related last week that he called to [REDACTED] about the systematic destruction of statements of the detainees, and [REDACTED] said that this did not raise any issues." [REDACTED] advised that this statement did not imply that the OCP was destroying statements or evidence. Lastly, [REDACTED] advised that the "USS Cole video" referenced in [REDACTED] e-mail referenced a "propaganda video" used by al Qaeda to recruit new members. The video was eventually turned over to Mr. Haynes' office as requested. Exhibit 13 sets forth details of the [REDACTED] interview.
15. [REDACTED], Washington, DC, was interviewed regarding his participation in the OMC. [REDACTED] indicated that he was detailed to the OMC in December 2003 from [REDACTED] pursuant to a Presidential Order for other Government agencies to assist DoD in the military commissions. He continued in this detail until approximately [REDACTED], when he was directed to return to [REDACTED] until the problems within OMC were addressed and resolved. [REDACTED] related that prior to his assignment to OMC in [REDACTED], he was present at the mock trial conducted by OMC in November 2003, where he acted as a "sage" for the purpose of observing and assessing the mock trial. [REDACTED] related that he has extensive experience as a criminal trial litigator, particularly in relation to international terrorism cases. He tried cases in the [REDACTED]. He is also a [REDACTED]. [REDACTED] has no direct knowledge of any criminal wrongdoing, misconduct, or ethical violations on the part of any member of OMC. He did not believe that any statements or actions on the part of any OMC member constituted false statements, dereliction of duty, or other criminal violations of the UCMJ. Rather, he believed that major disagreements on specific issues amongst the prosecutors were due to greatly differing interpretations of certain information and events. [REDACTED] did not believe that anyone willfully and knowingly misinterpreted anything. [REDACTED] believes that the problems within OMC which were outlined in the series of e-mails by [REDACTED], [REDACTED] and [REDACTED] stemmed from serious leadership failings by [REDACTED] and the DoD General Counsel's Office. [REDACTED] related that [REDACTED] in particular, contributed to many of the frustrations experienced by some of the junior prosecutors in OMC, due to his inability to lead the OMC prosecutors as a cohesive team with a common goal. Exhibit 14 sets forth details of the [REDACTED] interview.
16. [REDACTED] USA, OMC, Arlington, VA, was interviewed regarding his participation in the OMC. [REDACTED] stated that he has been assigned as

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a prosecutor in the OCP on the [REDACTED] Team since [REDACTED] was aware of the allegations of criminal wrongdoing and/or ethical misconduct cited by [REDACTED] in an e-mail, dated March 15, 2004. [REDACTED] attended the mock trial and refuted [REDACTED] allegations that [REDACTED] lied or made misrepresentations during the trial. [REDACTED] was tasked with presenting the first case for prosecution in the OMC. [REDACTED] stated that [REDACTED] and [REDACTED] disagreed on how to proceed with this prosecution. [REDACTED] advised that he did not agree with [REDACTED] assertion at the trial that the first case would be ready to proceed in three days. He believed that [REDACTED] would need one to two more weeks to be ready. [REDACTED] knows of no attempt to suppress FBI allegations of alleged detainee abuse. He went on to say that the individuals who heard the allegations, [REDACTED] and [REDACTED], briefed [REDACTED], [REDACTED], and [REDACTED] about the foregoing which resulted in further investigation into the matter. [REDACTED] responded that he did not believe [REDACTED] destroyed or hid evidence. [REDACTED] related it would be highly unlikely to permanently destroy the existence of an FBI 302 because the FBI stores them electronically. A copy could easily be reproduced. [REDACTED] had no knowledge about whether or not the "USS Cole" video was given to Mr. Haynes. He recalled that [REDACTED] once told him that the OCP would win some cases and possibly lose some of the cases. Exhibit 15 sets forth details of the [REDACTED] interview.

17. [REDACTED] NCIS, [REDACTED] Ft. Belvoir, VA, is the Special Agent in Charge/Deputy Commander of the CITF. [REDACTED] was cooperative during the interview but refused to allow the session to be recorded. [REDACTED] advised he did recall receiving some information from OMC regarding suspected abuse of detainees. He indicated that [REDACTED] telephonically notified him that OMC personnel were made aware of possible abuse of detainees during in-take processing at Bagram. According to [REDACTED] [REDACTED] stated OMC Attorney [REDACTED] reported FBI representatives informed him that an individual who was performing body cavity searches in Bagram requested to have his picture taken while performing a body cavity search on a detainee. [REDACTED] also noted the individual in Bagram reportedly vacated the area after the FBI representative questioned him about his status. [REDACTED] advised he subsequently reported the information to CITF Commander [REDACTED] USA. He further advised that [REDACTED] directed him to pass the information onto USACIDC for action. [REDACTED] stated he did so and confirmed USACIDC received the information. He also noted CITF members are required to attend an orientation course that addresses the protocol for reporting suspected abuse of detainees. [REDACTED] stated he does not know of any unethical or criminal conduct on the part of OMC personnel. However, he advised he is aware of on-going conflict within the OMC. He further advised he is not aware of any systematic destruction of detainee statements. Exhibit 16 sets forth details of the [REDACTED] interview.
18. [REDACTED] USMC, OCP, has been in his assignment since [REDACTED] believes that some of the detainee cases are almost ready for trial. [REDACTED] related that any statement that the prosecution could be ready to go in three days was not accurate. He does not recall the aforementioned

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statement being briefed to higher authorities. [REDACTED] believes challenges faced by the prosecution include interagency cooperation, proper classification of information, and discovery issues. [REDACTED] does not recall anyone making any misrepresentations of facts to MG Fiscus, USAF; MG Rives, USAF; or [REDACTED] USAF during the briefing of these persons by members of OCP. [REDACTED] does not believe that anyone in OCP ever destroyed evidence or suppressed statements of detainees. He believes that all allegations of abuse of detainees were forwarded to proper authorities. [REDACTED] was not aware of any criminal or ethical wrongdoing by anyone in the OCP, OMC, except for disrespectful conduct by [REDACTED]. Exhibit 17 sets forth details of the [REDACTED] interview.

19. Brigadier General Thomas Hemingway (Hemingway), USAF, is currently Legal Advisor to the Appointing Authority, OMC. He considers the majority of the allegations relative to potential destruction of evidence to be management/leadership related issues versus allegations of criminal wrongdoing. In his opinion, [REDACTED] had adequately addressed the destruction of evidence issue to the extent that follow-up was not necessary. He believes that the USS Cole videotape was in fact forwarded to the DoD Office of General Counsel. Regarding the moot court, BG Hemingway stated that any session would undoubtedly be scripted, as the purpose of such a session is to demonstrate that sufficient evidence exists to proceed to a commission. He stated that [REDACTED] countermanding policy set by [REDACTED] was an issue of a leadership/management topic versus an issue that would require initiation of a criminal investigation. In addressing the claim that a comment was made that OCP can substitute its opinion for that of the Appointing Authority, BG Hemingway indicated that to suggest that this could happen would be "stupid." BG Hemingway referred to interagency cooperation as issues that are to be expected and are addressed on a case-by-case basis. As to concerns regarding the taping of detainee conversations in GTMO and their production as potential evidence, he opined that it will not prove to be an issue in terms of discovery since the tapes are not being retained. BG Hemingway stated that the majority of problems encountered within the OCP were leadership related, but there were also some significant "followership" issues. Exhibit 18 sets forth details of the BG Hemingway interview.

20. [REDACTED], USAF, is a [REDACTED] currently assigned to the OMC. [REDACTED] has been in her current assignment since [REDACTED]. With regard to the allegations of criminal wrongdoing and/or ethical misconduct, [REDACTED] did not have any direct knowledge of allegations related to destruction of evidence, missing statements, suppression of detainee statements, or any of the other allegations. She had never heard anyone in the OMC make material false statements or misrepresentations. [REDACTED] indicated she witnessed an incident involving [REDACTED] and [REDACTED] USN. She indicated that on one occasion, [REDACTED] "exploded" at [REDACTED] in a hallway in OMC. In [REDACTED] opinion, [REDACTED] tone of voice and demeanor were disrespectful to [REDACTED]. She recalled an incident where [REDACTED] reprimanded [REDACTED] for insubordinate conduct toward [REDACTED]. [REDACTED] recalled another incident where [REDACTED] was told by [REDACTED] to leave his office after a heated discussion. She recalls [REDACTED] "stomping out" of the

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office. [REDACTED] recalls an incident in February 2004 where she took a message for [REDACTED] from an aide to a Congressman or Senator who was calling to reschedule a luncheon date with [REDACTED]. She related that she took this message and placed the message on [REDACTED] computer. [REDACTED] stated that [REDACTED] came to her and questioned her whether anyone else knew about the message. Upon responding that she had not told anyone about the message, [REDACTED] told her to forget about it. Later, [REDACTED] called her into his office and questioned her further as whether she had told anyone about this message as someone (unidentified) had mentioned this message to him.

[REDACTED] responded that she had not mentioned the message to anyone.

[REDACTED] then asked her whether anyone had asked her to watch him, or words to that effect. [REDACTED] stated that [REDACTED] was very paranoid about this incident. Exhibit 19 sets forth details of the [REDACTED] interview.

21. [REDACTED], USAFR, was interviewed at the United States Attorney's Office, [REDACTED] regarding his knowledge of alleged criminal wrongdoing or ethical misconduct in the OCP, OMC. [REDACTED] advised that from [REDACTED], through [REDACTED], he was activated to duty and detailed to the OCP. When asked specifically if he was aware of any criminal wrongdoing or ethical misconduct in the OCP, [REDACTED] replied in the negative. Regarding allegation of abuse of detainees, [REDACTED] advised he recalled very vague discussions in the office on a few occasions about the potential abusive treatment of detainees, but was not able to recall who made the comments or the timeframe the comments were made. [REDACTED] related that he had heard some "rumblings" about the alleged mistreatment of detainees in another foreign country. He advised he did not have any knowledge of the alleged systematic destruction of detainees' statements nor did he witness any destruction of statements while detailed to the OCP. [REDACTED] noted he thought the prosecutors had done a very good job at assembling the evidence in their case in chief, but other steps in the case remained undone. He explained that a lot of things were going on in the office to which he was not privy because a lot of the information was classified and he did not have a need to know. When asked specifically if he was aware of any criminal wrongdoing or ethical misconduct in the OCP of the OMC, he replied in the negative. Exhibit 20 sets forth details of the [REDACTED] interview.

22. [REDACTED] USAF, the Pentagon, is currently the [REDACTED] USAF. [REDACTED] has been in his present assignment since [REDACTED]. [REDACTED] stated that any information that he had regarding any of the allegations came from other people, namely [REDACTED] and [REDACTED]. He related that he, MG Fiscus, and MG Rives visited the OMC in the latter part of 2003. [REDACTED] indicated that this visit was prompted by concerns raised by [REDACTED] and [REDACTED] about the operation of the OMC. He stated that [REDACTED] and [REDACTED] presented a public relations type of briefing on the status of the first detainee cases ready for prosecution. [REDACTED] related that neither he nor MG Fiscus nor MG Rives asked any detailed questions of [REDACTED] or [REDACTED] concerning the cases. He

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mentioned that a thorough analysis of the cases to include a review of the elements of the offenses, witnesses, and documentary evidence is a function for [REDACTED] [REDACTED] responded that he did not know if this type of detailed analysis of the cases had ever been done by anyone. He cited two shortcomings at the OMC. First, that [REDACTED] did not have a large enough staff. Secondly, that [REDACTED] did not have the most experienced staff. He specifically referred to [REDACTED] who was [REDACTED] of the OCP mission. [REDACTED] stated that [REDACTED] had never tried a case, and this appeared to be "a disconnect." Exhibit 21 sets forth details of the [REDACTED] interview.

- 23. [REDACTED], FBI, [REDACTED], is assigned to FBI [REDACTED] and is temporarily detailed to JTF GTMO. [REDACTED] advised his first contact with OMC personnel was circa summer 2003. He also advised he has no knowledge of misconduct on the part of OMC personnel, [REDACTED]

[REDACTED] [REDACTED] advised he knows of no willful misrepresentations on the part of OMC personnel but noted OMC personnel did not appear to have a thorough understanding of their discovery obligations. [REDACTED] believed that OMC prosecutors did not initially realize the full scope of information and data in the possession of other U.S. agencies that should be considered discoverable. Additionally, [REDACTED] advised he has no knowledge of the systematic destruction of evidence or the suppression of information regarding abuse of detainees. Exhibit 22 sets forth details of the [REDACTED] interview.

- 24. [REDACTED] Deputy Chief, Counterterrorism Section, DoJ, Washington, DC, indicated he attended a mock trial held at OMC at the request of Deputy Assistant Attorney General David Nahmias. [REDACTED] was the primary presenter. The mock trial consisted of a general presentation of what the military's case would be concerning an individual that is currently being detained at GTMO. [REDACTED] related that the mock trial presentation fell somewhere between a true mock trial and a "dog and pony" show. Time issues limited the extent to which an actual mock trial could be conducted. It was not a true mock trial, since there was only a single presentation by the defense. [REDACTED] stated he has been a prosecutor since 1989 and has tried over 50 cases. [REDACTED] In his opinion, the OMC prosecutors were very reliant upon the statements of detainees, especially in light of the fact that detainees have been in U.S. custody for over two years. Aside from this issue, OMC prosecutors were utilizing a decent theory for prosecution of the case. [REDACTED]

He referred that throughout the period that [REDACTED] was detailed to OMC, [REDACTED] never complained about being underutilized at OMC nor stated that he was being treated poorly. In the opinion of [REDACTED] none of the interactions among officers that he observed during the mock trial presentation could be deemed as disrespectful. Nothing occurred that would have indicated that there were significant problems within OMC.

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Interaction among officers did not "set off alarms." [REDACTED] upon reading e-mails generated by members of OMC, became aware that there are likely problems within OMC. [REDACTED] indicated that he would be disturbed should claims that OMC had suppressed evidence of potential abuse prove to be true. He vaguely recalled that someone at OMC may have represented that the office could be prepared to go to trial within a relatively short period of time. He did not recall the specific time frame referenced; however, he believed that it was "overly optimistic." In the opinion of [REDACTED] OMC needed more time to prepare to counter a strong defense. [REDACTED] related that [REDACTED] was the only individual that he could recall presenting evidence throughout the mock trial. He recalls a female (NFI) playing a minor role in the presentation, but [REDACTED] functioned as the lead attorney. Exhibit 23 sets forth details of the [REDACTED] interview.

25. [REDACTED] Resident Agent in Charge, [REDACTED] GTMO, related that while assigned as the [REDACTED] in GTMO, he had occasion to meet with [REDACTED] and [REDACTED] some time in March 2004. [REDACTED] stated [REDACTED] and [REDACTED] questioned him about certain issues related to potentially exculpatory and discoverable information in the hands of various agencies dealing with detainees in GTMO. [REDACTED] indicated he agreed to assist OMC by reviewing certain case material in the control of CITF. Regarding other matters not under CITF control, [REDACTED] referred [REDACTED] and [REDACTED] to [REDACTED] GTMO. [REDACTED] mentioned that [REDACTED] and [REDACTED] requested full access to Joint Detainee Information Management System (JDIMS), but were only allowed limited access by JTF. [REDACTED] explained to [REDACTED] and [REDACTED] about the possible specific locations of potentially discoverable material produced or retained at GTMO. In [REDACTED] opinion, [REDACTED] and [REDACTED] did not have a good idea of the process of information flow pertaining to detainees and did not understand the "big picture." Exhibit 24 sets forth details of the [REDACTED] interview.
26. [REDACTED] FBI-GTMO, is the [REDACTED] of the [REDACTED] at GTMO. [REDACTED] related he met with [REDACTED] and [REDACTED] on or about April 1, 2004, at GTMO. [REDACTED] fully explained to [REDACTED] and [REDACTED] the details of the operation, its current limitations, and anticipated capabilities in the near future. Exhibit 25 sets forth details of the [REDACTED] interview.
27. [REDACTED], USMC, was interviewed at 400 Army Navy Drive, Arlington, VA, regarding her knowledge of alleged criminal wrongdoing or ethical misconduct in the OCP. [REDACTED] related since [REDACTED] she worked on the Task Force Discovery as a [REDACTED] with [REDACTED]. [REDACTED] related she had seen the e-mail, but had no first hand knowledge of any criminal or ethical misconduct to include: false statements, destruction of evidence, allegations of missing notes from FBI 302, or suppression of statements of abuse. [REDACTED] advised that on several occasions in the daily 0900 OCP office meetings, [REDACTED] mentioned allegations of abuse of detainees in a foreign country. Exhibit 26 sets forth details of the [REDACTED] interview.

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28. [REDACTED] USN, [REDACTED] Norfolk, VA, described his relationship with three members of the OCP, OMC: [REDACTED], [REDACTED], and [REDACTED]. [REDACTED] related that contacts between [REDACTED] and [REDACTED] have been minimal and contact with [REDACTED] has been especially limited. [REDACTED] referred that sometime around January 2003, [REDACTED] contacted him relative to "chopping" the proposed OMC trial guide. The trial guide contains the procedures to be utilized during military commissions. It consists of a "script" of how things will unfold during commission sessions. This guide does not contain any legal determinations or decisions regarding legal issues. To date, he has done two "chops" on this legal guide. The first was at the request of the [REDACTED] of the U.S. Army. The second was at the request of [REDACTED]. [REDACTED] stated that [REDACTED] has never discussed legal issues with him, and that [REDACTED] "knows better." There have been no discussions relative to legal issues involving pending commissions. [REDACTED] related that [REDACTED] calls him once every two months or so in order to provide general status updates as to what may happen with regard to commissions. Both [REDACTED] and [REDACTED] were aware of the fact that [REDACTED] had been nominated to serve as a [REDACTED] (although [REDACTED] has yet to be formally selected). [REDACTED] called [REDACTED] as a courtesy. There were no discussions of legal issues during these conversations. [REDACTED] advised that he has been a trial judge for seven years and an appellate judge for two years. He is very familiar with the rules of professional conduct and ethics that govern judges and attorneys. Absolutely nothing relating to his relationship with [REDACTED] and [REDACTED] has come close to "crossing the line." He has had similar contacts with OMC's Office of Chief Defense Counsel. Exhibit 27 sets forth details of the [REDACTED] interview.

29. [REDACTED] USMC, Arlington, VA, was interviewed regarding his knowledge of alleged criminal wrongdoing or ethical misconduct in the OCP. [REDACTED] reported to the OCP on October 1, 2003, as the [REDACTED]. [REDACTED] advised he was not aware of any criminal or ethical misconduct within the OCP to include destruction of evidence. [REDACTED] advised that while at GTMO during the December 2003 timeframe, he came across information on a computer relative to tapes of interviews of detainees in GTMO. He advised that he sent an e-mail to GTMO regarding this issue, and [REDACTED] handled the issue after that. [REDACTED] advised they were later told that by GTMO that they did not have the tapes. Exhibit 28 sets forth details of the [REDACTED] interview.

30. [REDACTED] [REDACTED] was interviewed in her office. [REDACTED] [REDACTED] could not recall when the mock trial occurred. Mr. Haynes, General Counsel, DoD, and/or Mr. Cobb asked [REDACTED] to be involved in the mock trial put on by the OCP to in

essence offer suggestions of how to present the first case in a just and fair manner. She understood that the OMC wanted to present the first case that the "world would understand as being just." Further, the OMC wanted to present a case of importance. [REDACTED] added that the OMC wanted the first case to be "clean" which meant "in fact and appearance, the confessions were voluntary-not coerced." She stated that the mock trial lasted two days. [REDACTED] provided an introduction of the case to the attendees. In her opinion, the lead prosecutor, [REDACTED] appeared highly competent. Upon completion of the mock trial, [REDACTED] raised an issue about the discovery process. It was explained that defense counsel could request documents from the prosecution pursuant to the discovery process that requires the prosecution to turn over any exculpatory statements. [REDACTED] was under the impression that the [REDACTED]

[REDACTED]

One or more of the prosecutors in the OMC echoed this same sentiment to [REDACTED]. [REDACTED] was asked if any allegations of detainee abuse were raised in the mock trial. [REDACTED]

[REDACTED]

[REDACTED] did not recall any member of the OMC stating the date the first trial would commence. She believed that it was possible that she heard "60 days" from the time the mock trial ended. She provided a memorandum to Mr. Haynes and to Deputy Secretary of Defense Paul Wolfowitz outlining her comments and critiques of the mock trial. Exhibit 29 sets forth details of the [REDACTED] interview.

- 31. [REDACTED] U. S. Army Reserve (USAR), was interviewed regarding his participation in the OMC. As background, [REDACTED] reported to active duty on March 1, 2004, and was assigned to the OCP. [REDACTED] has assisted on the discovery team. Approximately three weeks prior to his interview, while working with the [REDACTED] he heard of a detainee who had claimed abuse while in detention. [REDACTED] informed [REDACTED] of the abuse issue. [REDACTED] does not know what [REDACTED] did with the information. [REDACTED] believed that all allegations of detainee abuse were to be relayed to [REDACTED]. He related that he only had second hand information regarding the allegations under investigation relative to the OCP. He advised that he was not aware of any destruction of evidence, any criminal wrongdoing, ethical misconduct, or suppression of statements. Exhibit 30 sets forth details of the [REDACTED] interview.

- 32. [REDACTED] USAF, [REDACTED] OMC, Office of the Appointing Authority (OAA). [REDACTED] advised he arrived for duty with the OMC on March 12, 2004. He further advised he was subsequently assigned to the OAA as a [REDACTED]. [REDACTED] stated that he knows of no criminal wrongdoing or ethical

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misconduct on the part of OMC personnel. He also advised that he is not aware of the specific allegations of misconduct made against OMC personnel. [REDACTED] had no substantive information to add to this investigation. Exhibit 31 sets forth details of the [REDACTED] interview.

33. [REDACTED] USAR, was interviewed at 400 Army Navy Drive, Arlington, VA, regarding his knowledge of alleged criminal wrongdoing or ethical misconduct in the OCP. As background, [REDACTED] related he reported to active duty on March 1, 2004 to the OCP. [REDACTED] related that he only had second hand information regarding the allegations relative to the OCP. He advised he was not aware of any destruction of the evidence, allegations of detainee abuse, criminal wrongdoing, ethical misconduct, or suppression of statements within the OCP. Exhibit 32 sets forth details of the [REDACTED] interview.

34. [REDACTED] USN, [REDACTED] OMC, OCP, was [REDACTED] and [REDACTED] provided the following information. [REDACTED] advised he started working with OMC circa November 2002. He further advised he participated in a mock trial regarding the prosecution of prisoner [REDACTED] circa November 2003. He advised he made no misrepresentations regarding abuse in the case or time periods involved to prepare for prosecution. He indicated any representations made concerning trial preparation were made regarding his part of the case, not the entire case itself. He further advised he is not aware of any specific cases of abuse regarding [REDACTED] and did not ever remove any documents or notes from [REDACTED] notebook. He further advised he made no attempt to suppress any information regarding the abuse of detainees at Bagram brought forward by [REDACTED] and [REDACTED]. [REDACTED] indicated he did not think it was appropriate to advise [REDACTED] at that time of the information. [REDACTED] further advised he thought it would be appropriate to gather more information on the matter before implying FBI personnel witnessed abuse and did not report it. [REDACTED] also advised that he is aware the information was later reported to [REDACTED] and to CITF personnel. [REDACTED] also advised he did not refuse to provide Mr. Haynes with a copy of the USS Cole video but waited for [REDACTED] return to the office so he could make the decision. [REDACTED] stated he was unaware of any misrepresentations regarding office meetings and briefings. However, he noted that [REDACTED] tries to put a positive spin on issues that at times could be mistaken as willful misrepresentations. He further advised that he believed [REDACTED] always had OMC's best interest at heart in these situations. [REDACTED] stated he is unaware of any misconduct on the part of OMC personnel including the alleged destruction of evidence. However, he did advise that he believes [REDACTED] allegations are reckless and untrue. He advised that [REDACTED] was frequently disrespectful to senior officers including himself, [REDACTED] and [REDACTED]. He also noted that [REDACTED] even showed disrespect to senior officers in the presence of enlisted personnel. [REDACTED] advised that [REDACTED] baseless allegations of wrongdoing have affected careers and caused a delay in future prosecutions handled by the OMC. [REDACTED] also provided a sixteen-page statement with classified attachments refuting allegations of wrongdoing made by [REDACTED]. Exhibit 33 sets forth details of the [REDACTED] interview.

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35. [REDACTED] USNR, was interviewed regarding his knowledge of alleged criminal wrongdoing or ethical misconduct in the OCP. [REDACTED] is assigned to [REDACTED] as a [REDACTED] but is currently "on loan" to the OCP: [REDACTED] requested that [REDACTED] be reassigned from the [REDACTED] to the OMC to conduct research. The [REDACTED] agreed, and [REDACTED] worked at the OMC from February 2003 to June 2003. He initially did not have a [REDACTED] clearance and therefore, did not have access to [REDACTED] classified information. [REDACTED] assisted in drafting rules and regulations for the OMC relative to administrative issues such as "use of interpreters." The CITF put 7 or 8 cases together and presented them to the OCP to determine prosecutive viability. [REDACTED] looked at 2 or 3 of these cases and drafted some of the initial charges. He also worked with [REDACTED] conducting research to determine how to prosecute Iraqis either in the OMC or in an International Tribunal. Initially, [REDACTED] was the [REDACTED] on the [REDACTED] case. He had not heard of any allegations of abuse. [REDACTED] queried information from the FBI and CITF contained on computer discs to retrieve [REDACTED] statements. Upon reviewing the statements, [REDACTED] did not find any reference to abuse. [REDACTED] did find [REDACTED] statements indicating fair treatment by captors. [REDACTED] understood that [REDACTED] would ultimately be the lead prosecutor on the [REDACTED] case. Exhibit 34 sets forth details of the [REDACTED] interview.

36. Major General (MG) Thomas J. Fiscus USAF was interviewed at his office in the Pentagon regarding his knowledge of alleged criminal wrongdoing or ethical misconduct in the OCP of the OMC. MG Fiscus recalled in early to mid February 2004, he attended a briefing at the OCP. He advised that this visit was prompted by the concerns of [REDACTED] and [REDACTED] regarding the preparation of the cases, their access to information, and whether the OCP leadership was accurately portraying the difficulties faced by the OCP staff. MG Fiscus believed that [REDACTED] and [REDACTED] had originally surfaced some concerns in a memorandum, and he requested that they meet with him. MG Fiscus related that MG Jack Rives and possibly [REDACTED] were at this meeting. He stated that [REDACTED] and [REDACTED] were very concerned that the two cases that had been identified for prosecution did not have sufficient evidence to go forward on the cases. MG Fiscus described the OCP briefing as a "happy face briefing." He advised that the briefing suggested that everything was in good shape and there was a lot of cooperation between the OMC and other agencies. After the briefing, he and MG Rives met privately with [REDACTED] and questioned [REDACTED] a little closer. MG Fiscus recalled that [REDACTED] seemed to back off of a little bit from what he had said earlier in front of the broader group, which included the entire OCP staff. MG Fiscus opined that during the briefing, [REDACTED] was speaking in terms designed to present a public view. According to MG Fiscus, [REDACTED] provided a more candid assessment in the private meeting. Upon being questioned as to the OCP's state of readiness, MG Fiscus opined [REDACTED] sensed a strong desire within the administration to move the cases forward. MG Fiscus recalled that there was some concern expressed by [REDACTED] and [REDACTED] that [REDACTED] was trying to put some sort of date on when they could move forward with the cases, but [REDACTED] and [REDACTED] were convinced that the timeframe was

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unrealistic. MG Fiscus did not recall a statement being made to the effect that the cases could be ready with a three days notice.

MG Fiscus advised he had spoken with BG Hemingway based on his initial conversation with [REDACTED] and [REDACTED] regarding the problems at OCP. MG Fiscus indicated that a couple days later BG Hemingway advised him that [REDACTED] had been directed to spend full time at the OCP. MG Fiscus stated that about six weeks later, [REDACTED] and [REDACTED] came back to him and advised the issues were just as serious as they thought they were in terms of the disconnects and status of the case. He advised this prompted the request for the visit to the OCP. MG Fiscus says that after the briefing things began to unravel. He added that in a staff meeting [REDACTED] reportedly singled out the USAF members as not being team players and for calling his leadership into question. MG Fiscus also noted [REDACTED] was later taken off the prosecution team of one of the cases. MG Fiscus believes he spoke with BG Hemingway again and suggested that he talk with [REDACTED] and [REDACTED] regarding the issues at OCP. It is his understanding that [REDACTED] talked to them and asked them to put their concerns in writing. Per MG Fiscus, they did so in an unfortunate manner in an e-mail. MG Fiscus said that after the e-mail was sent, [REDACTED] reacted very negatively with a return e-mail that was broadcast to the entire staff. He says that on day of the e-mail exchange, [REDACTED] and [REDACTED] came to his office and gave him a copy of the e-mail. MG Fiscus related after receiving a copy of the e-mail, he engaged the USAF General Counsel (Ms. Mary Walker) and Mr. Haynes. According to MG Fiscus, he briefed Mr. Haynes in the presence of Ms. Walker, a [REDACTED] (phonetic), and MG Rives regarding the issues. MG Fiscus added that Mr. Haynes was sort of "prep-ed" because of a previous meeting with Fiscus. He noted that Mr. Haynes immediately called a meeting of the Judge Advocates General to advise him on how to proceed with this problem and then directed the creation of an operational assessment team to look into the issues. When asked whether he had any knowledge of anyone in the OCP making any material false statements or misrepresentations prior to the e-mail, MG Fiscus provided that he questioned various aspects of [REDACTED] briefing such as timeframe and the nature of the interagency cooperation. He explained that given [REDACTED] statements were made to "stakeholders," he would have expected greater candor because the USAF has contributed heavily to the effort. Exhibit 35 sets forth details of the MG Fiscus interview.

37. Major General Jack L. Rives, Deputy Judge Advocate General, USAF was interviewed at his office in the Pentagon, regarding his knowledge of alleged criminal wrongdoing or ethical misconduct in the OCP. MG Rives advised that in Fall 2003, [REDACTED] relayed reports from [REDACTED] and [REDACTED] which indicated the OCP, was not functioning very effectively. He advised part of problem was organizational and part of it was the quality of people working there. MG Rives advised that he was getting the information second and third hand, and recalled on a couple of occasions, [REDACTED] showed him some e-mails that he received. MG Rives related that he and MG Fiscus visited the OCP on February 24, 2004. MG Rives added that prior to visiting the OCP, he and MG Fiscus had spoken to BG Hemingway on a couple of occasions about the concerns they were hearing about the OCP. He related that immediately after the

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briefing, he and MG Fiscus asked questions of ██████████ and his staff and this caused real concern. He went on to say if they had just listened to the briefing without asking questions, they would have left there feeling that OCP had great people who were enthused about what they were doing and the prosecution was in good shape. According to MG Rives, after asking question he did not receive any satisfactory answers. He provided that although ██████████ briefed that the interagency process was working smoothly, it became apparent that OCP was not getting the cooperation they needed from the interagency process. He related that he had concerns about how they were organized, how they were preparing, and how the interagency process was working. Additionally, MG Rives stated that by the time of the briefing, it was clear that the OCP had first drafted charges and now they were trying to find the evidence to support the charges. He went on to say this was an absurd way for a prosecutor's office to operate. Another issue raised was repeated interrogations of prisoners and the prosecutors not capitalizing on getting the answers to questions that they need asked by the interrogators. MG Rives explained that the prisoners at GTMO can be questioned at any time and have been questioned repeatedly by a variety of investigators, who seemed to have compartmentalized the information and was not sharing the information effectively. MG Rives went on to say that he was aware that OCP had participated in a mock trial in Nov/December 2003. He related that he had been told that the trial was reportedly a façade and a "scripted show." He said the various experienced attendees did not realize the proceeding was scripted and thought they were getting honest answers. He was told this secondhand by way of ██████████ from information that ██████████ had received from ██████████ and ██████████

The private discussion he and MG Fiscus had with ██████████ caused them to have some misgivings about OCP's level of preparation. He noted that ██████████ seemed to be aware of how to do things more effectively, but was not doing those things. MG Rives related that he found it troubling that ██████████ was having problems obtaining an item as basic as the final form statements from investigators (FBI 302s), but found a need to draft charges and announce the charges publicly. Another item that raised concerns to him was that ██████████ indicated that he was aware of the individual who would likely be the Presiding Officer (PO) at one of the first two Military Commissions. He went on to say that ██████████ had been in personal contact with the individual, who had not been announced as the PO. MG Rives explained this raises some ethical issues about having *ex parte* conversations between the Office of the Chief Prosecutor and the individual, who was going to be the PO. MG Rives indicated he and MG Fiscus later discussed this matter with BG Hemingway, and BG Hemingway was sure that ██████████ had only discussed procedural matters with the potential PO. He advised that he did not know how BG Hemingway would know this when he was not in on the conversations with ██████████ He related that his discussions have been limited to the OCP, Office of Judge Advocate General channels, and BG Hemingway. He noted that MG Fiscus raised concerns to Ms. Mary Walker, USAF General Counsel, and also at a meeting MG Fiscus attended with the DoD General Counsel, Service General Counsels, and the Judge Advocate Generals regarding the lack of preparation by the OCP. When asked if ██████████ made any statements that were materially false to him, MG Rives said it was nothing that he

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materially fabricated or outright lied about, but he engaged in a lot of “puffery” and wanted them to believe that they were in really good shape for the prosecutions. He related that when they followed up with questions [REDACTED] did not give them satisfactory answers and noted that there was not a single answer that he handled well. He went on say that he would not be surprised if [REDACTED] honestly believed that they were ready. He recounted that in late Fall 2003, he and MG Fiscus met with [REDACTED] and [REDACTED] regarding their concerns several times. He related that after the meetings these concerns were brought to BG Hemingway’s attention, and he was advised that action needed to be taken.

MG Rives believes the *ex parte* discussions between [REDACTED] and a person potentially making the judicial decision in these cases ([REDACTED]) could be ethical misconduct. He added that [REDACTED] questioning of [REDACTED] and [REDACTED] loyalty was not handled professionally. Exhibit 36 sets forth details of the MG Rives interview.

38. [REDACTED] U.S. Army. [REDACTED] is currently a [REDACTED] at OMC. [REDACTED] reported to OMC during the first week of March 2004. As a result of his brief tenure at OMC, [REDACTED] has no information of relevance to this investigation. He is unaware of specifics relative to allegations of criminal and/or ethical misconduct on the part of OMC members. Exhibit 37 sets forth details of the [REDACTED] interview.
39. On April 15, 2004, [REDACTED] USAF, was interviewed regarding his knowledge of alleged criminal wrongdoing or ethical misconduct in the Office of the Chief Prosecutor of the Office of Military Commissions. [REDACTED] was sworn, [REDACTED] and voluntarily provided the following information.

BACKGROUND

[REDACTED] was assigned to the OCP as an assistant prosecutor on [REDACTED] and left that position on [REDACTED]. He stated he was “shocked” at being assigned as a young [REDACTED] to the OCP. He stated that he knew little about al-Qaeda other than what he had seen in the media. Prior to his arrival, [REDACTED] spoke with [REDACTED] USAF, OCP prosecutor. [REDACTED] told [REDACTED] that the initial cases were ready to go. When he arrived at the OCP, he was surprised at how understaffed the office appeared. At the time of his arrival, he stated [REDACTED] [REDACTED] [REDACTED] [REDACTED] and [REDACTED] were already assigned as prosecutors. For reference, [REDACTED] is a prosecutor; [REDACTED] is a prosecutor; [REDACTED] was the Deputy Chief Prosecutor (in March 2004 when he was reassigned from that duty); [REDACTED] is a prosecutor; and [REDACTED] was the Chief Prosecutor. [REDACTED] arrived for duty as a prosecutor at the OCP about two weeks after [REDACTED] arrived. [REDACTED] initial duties included “Al-Qaeda 101” (how Al-Qaeda was organized and functioned), a sentencing case, and drafting trial instructions. He was assigned as second chair to the [REDACTED] case. [REDACTED] was the lead prosecutor. On December 22, 2003, the OCP was reorganized. [REDACTED] was reassigned to be in charge of Task Force (TF)

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Discovery. He stated that he asked and received permission from [REDACTED] to be removed from the [REDACTED] case in late January or early February 2004. [REDACTED] removal from the [REDACTED] case was apparently not communicated to [REDACTED] until the first part of March 2004.

[REDACTED] GENERAL OVERVIEW OF THE OFFICE

In early [REDACTED] [REDACTED] replaced [REDACTED] as the Deputy Chief Prosecutor, OCP. [REDACTED] requested a March 11, 2004 meeting, via e-mail, with [REDACTED] and [REDACTED] to discuss the concerns [REDACTED] had previously raised with her. [REDACTED] stated that he and [REDACTED] had been continuously building the strength of an argument to [REDACTED] that the OMC "is not ready to go to trial" and the OMC "could not have the charges signed" on the first cases. [REDACTED] stated that if BG Hemingway signed the charges on the first two cases, that he [REDACTED] could not "walk into court and defend these actions." [REDACTED] took notes of the meeting. It appeared to [REDACTED] that this meeting was a "speak now or forever hold your peace" meeting. [REDACTED] believed that [REDACTED] had orchestrated this meeting to have [REDACTED] and [REDACTED] present their concerns so [REDACTED] could later say, "I asked these guys what their problems were, they said the following three things, and I took care of them." [REDACTED] essentially opined that [REDACTED] was attempting to lock [REDACTED] and [REDACTED] into specific positions so at a later date if these issues were raised again, [REDACTED] could state that the issues had already been addressed. [REDACTED] stated that he did not "feel comfortable with that." According to [REDACTED] [REDACTED] was attempting to frame his ([REDACTED] entire litany of issues as a "personality clash within the office." [REDACTED] implied that [REDACTED] [REDACTED] as well as some other members of the office (OCP), "didn't like" [REDACTED] because he was negatively affecting the OCP. [REDACTED] refuted this notion to [REDACTED]. Rather, [REDACTED] stated to [REDACTED] that his concerns were about some very fundamental issues of how the OCP was preparing the cases. [REDACTED] stated to [REDACTED] that he was very concerned that the OCP was not acknowledging the correct state of readiness of the cases and that particular information was not being briefed to the DoD civilian leadership. [REDACTED] purportedly told [REDACTED] "I know we are not ready on the cases, but the first thing Defense (counsel) is going to do is request a three or four month delay. We are going to have time for all this." [REDACTED] stated that [REDACTED] had acknowledged that he was aware of the foregoing concerns, yet he typically told [REDACTED] "we'll worry about that later." [REDACTED] strongly disagreed with this tactic. [REDACTED] was convinced that Mr. Haynes, Mr. Cobb, and [REDACTED] (current Deputy Counsel, OGC, DoD) were not aware of, nor would agree with [REDACTED] aforementioned strategy in preparing the cases for trial. [REDACTED] further stated that he observed [REDACTED] attempts to manipulate the evidence and portray the cases as more than they were. [REDACTED] perceived a philosophy of "don't do anything which would jeopardize our (OCP) continued progression as an office with the prosecution of these cases" as an "overriding consideration" throughout his time at the OCP. [REDACTED] expressed dismay that the OCP was still attempting to put the first cases together after so much time had passed with only a limited staff assigned. He envisioned the OCP needed

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about 30 more prosecutors to assist in furthering the cases. [REDACTED] stated that [REDACTED] made a statement to the media on February 9, 2004, to the effect that "Trials are imminent." According to [REDACTED], [REDACTED] made these types of "overblown" statements all too often. [REDACTED] felt that [REDACTED] inaccurate representations of the OMC's state of readiness constituted a dereliction of duty.

[REDACTED] felt that information pertaining to the cases was poorly disseminated within the office. He did not know the details of the cases. He felt this inhibited him from doing his job at TF Discovery. [REDACTED] told [REDACTED] that he ([REDACTED]) did not need to know the details of all the cases.

[REDACTED] believed the CITF was set up to support the OCP. [REDACTED] believed that the CITF has documents relevant to their cases that the OCP does not have. He cited further problems with inter-agency cooperation. He stated that it was difficult to obtain documents from various government agencies.

[REDACTED] E-MAIL DATED [REDACTED]

[REDACTED] defined the email dated [REDACTED] and sent the same day as "extremely important" to document his concerns. [REDACTED] described the meeting on [REDACTED] with [REDACTED], [REDACTED] and [REDACTED] as the impetus to write the e-mail. He felt he needed to make a record of all the concerns he and [REDACTED] raised because there was the potential that [REDACTED] might contend the issues had been addressed when in fact they had not. [REDACTED] stated that after his email went out, [REDACTED] called him and [REDACTED] into his office and basically called them liars. [REDACTED] stated that he wrote the e-mail on [REDACTED] in collaboration with [REDACTED] and with some input from [REDACTED]. According to [REDACTED], the e-mail was not intended to be the basis for a complaint to an Inspector General or to lodge formal allegations. It was intended to serve as running tally of issues that were not being addressed by [REDACTED]. [REDACTED] asserts that other members of the OCP have acknowledged many of his concerns involving the shortcomings and lack of preparedness of the cases. He believed the following areas have continuously hindered the OCP's preparedness: (1) inexperienced litigators and (2) the shortcomings of the cases not being properly briefed up the chain of command.

[REDACTED] addressed the following comments made in the e-mail.

- [REDACTED] **misrepresentations at the mock trial:** The mock trial occurred on November 6, 2003. [REDACTED] told the members of the OCP beforehand that the trial was set up to convince "sages" who represented Deputy Secretary of Defense Wolfowitz that the OMC was ready to prosecute its first cases and ultimately convince Deputy Secretary Wolfowitz to sign off on the charges against the detainees. [REDACTED] was slotted to prosecute the first case against a detainee identified as "[REDACTED]". [REDACTED] was aware that [REDACTED] had alleged abuse while in the custody of a foreign country. [REDACTED] told the mock trial attendees that [REDACTED] had made no allegations of abuse. [REDACTED] had seen [REDACTED] notes referencing an FBI 302 that indicated [REDACTED]

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had alleged abuse. [REDACTED] thought [REDACTED] should have addressed the foregoing during the trial to give the attendees an accurate picture of the case and to make preparations to rebut any potential issues a defense counsel could raise. [REDACTED] also stated that [REDACTED] CITF, had not adequately researched [REDACTED] allegations of abuse or interviewed all the relevant witnesses. Days after the trial, [REDACTED] could not find [REDACTED] notes about [REDACTED] alleged abuse. [REDACTED] went to [REDACTED] and advised him of [REDACTED] misrepresentations at the mock trial and that [REDACTED] notes were missing from [REDACTED] notebook. [REDACTED] purportedly told [REDACTED] "For your own personal safety, do not bring this up to [REDACTED]. Let me do it." [REDACTED] believed that [REDACTED] was unaware of many pertinent facts pertaining to the [REDACTED] case. For example, [REDACTED] was aware that [REDACTED] made 38 statements that are documented. However, [REDACTED] represented that there were only 24 statements. Further, the theory of the case against [REDACTED], a general conspiracy, and the elements of the crime were not adequately addressed. [REDACTED] was also concerned that a proof analysis was not done and provided to the sages. [REDACTED] stated that the attendees were given notebooks full of documents containing limited useful information. All the foregoing was not being briefed to the DoD Office of General Counsel or its representatives at the mock trial. [REDACTED] felt that the sages were misled about the actual state of readiness. He stated that they would be "shocked" to learn what steps had not been taken to prepare the cases. [REDACTED] believed the possibility existed that the OMC would be shut down if the DoD civilian leadership knew of the foregoing. [REDACTED] believed that he heard [REDACTED] state at the mock trial that the OCP would be ready for trial in three days. [REDACTED] thought that assertion was very inaccurate and generally not supported by other members of the OCP.

- **Suppressing FBI allegations of abuse at Bagram** – According to [REDACTED], two prosecutors at the OCP, [REDACTED] and [REDACTED] were on a trip in Florida mid January 2004 when FBI agents purportedly told them in confidence about allegations of detainee abuse at the Bagram Detention Facility. The day [REDACTED] returned from Florida he told [REDACTED] about the allegations. [REDACTED] purportedly told [REDACTED] that he had advised [REDACTED], [REDACTED] and [REDACTED] of the allegations that same day. [REDACTED] and [REDACTED] purportedly told [REDACTED] not to brief [REDACTED] on this due to the fact that the FBI agents relayed the allegation in confidence. If [REDACTED] raised this issue, the resulting action might be a degradation of the relationship between the OMC and the FBI. Approximately one month later [REDACTED] spoke to [REDACTED] about the foregoing. [REDACTED] purportedly instructed [REDACTED], [REDACTED] and [REDACTED] that same day to report the allegations to the USACIDC.
- **Refusal to give Mr. Haynes the USS Cole video** – [REDACTED] stated that [REDACTED] was reluctant to turn over this video because it was intended to be used as a centerpiece of the evidence against [REDACTED]. According to [REDACTED], [REDACTED] was aware that this video could be construed as a weak piece of evidence and if Mr. Haynes reviewed it, he would become aware of how little evidentiary value the tape offered.
- **The disappearance/destruction of evidence** – [REDACTED] reiterated that his copy of [REDACTED] notes detailing the FBI 302 was missing from his notebook. [REDACTED] did not accuse anyone of taking the notes. Regarding the destruction of evidence, [REDACTED]

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related that he was referring to destruction of taped conversations of detainees at GTMO. The email was not meant to imply that anyone in the OCP was destroying evidence.

- **“I’ve known about this for a year”** - [REDACTED] stated that this referred to [REDACTED] knowledge of potentially useful information, a detainee on the UN 1267 list, which he failed to disseminate and investigate further.
- [REDACTED] **misrepresentations at the office overview of his case** - This information is covered in [REDACTED] misrepresentations at the mock trial” above.

[REDACTED] stated that he met separately with Mr. Haynes and Mr. Dell’Orto, Principal Deputy General Counsel, DoD, on March 3, 2004. He briefed them on his perceptions of the OCP. This included the state of the cases, the mock trial, the USS Cole video, detainee on the UN 1267 list, lack of inter-agency cooperation, use of the CITF, and other issues covered later in his March 15, 2004, e-mail. Ms. Mary Walker, USAF General Counsel, was present when [REDACTED] discussed the foregoing with Mr. Haynes. [REDACTED] stated that Mr. Haynes appeared surprised as if this were the first time he had heard these issues.

[REDACTED] stated that he regularly spoke to [REDACTED] about his concerns of the OCP, OMC. [REDACTED] was [REDACTED] former supervisor. [REDACTED] apparently passed the concerns on to MG Fiscus and MG Rives. On February 24, 2004, the OCP briefed MG Fiscus and MG Rives on the status of the cases. [REDACTED] provided the majority of the overview of the cases. [REDACTED] believed that [REDACTED] misrepresented the state of readiness in terms of case preparation for trial. [REDACTED] also stated that [REDACTED] failed to raise the issue of [REDACTED] alleged abuse. [REDACTED] and the Generals met separately after the presentation. Exhibit 38 sets forth details of the [REDACTED] interview.

40. [REDACTED] USA, is the [REDACTED] Office of Military Commissions. [REDACTED] and [REDACTED] provided the following information.

- [REDACTED] maintains that he has done nothing wrong, and that allegations claiming that he is guilty of unethical and/or criminal misconduct are “blatant lies.” His recent [REDACTED] is the result of General Altenburg’s need to avoid controversy that may impact the OMC.
- [REDACTED] decision to redistribute an e-mail received from [REDACTED] and others was the result of his recognition of the seriousness of the allegations levied against [REDACTED] and other members of OMC. [REDACTED] believes that it was necessary to “shine light” upon these serious allegations in order to avoid the appearance of impropriety.
- [REDACTED] believes that members of the USAF that levied complaints against him and other members of OMC do not believe in the military commission process, and feel that OMC does not have enough evidence to prosecute GTMO detainees.
- [REDACTED] acknowledges making statements that OMC was ready to proceed to prosecution with three days notice. However, he qualifies his statements by indicating that he is only referring to presentation of the “case in chief.” The cases are relatively simple, and are based solely upon statements made by detainees. His three-day estimate

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does not include the amount of time it would take to prepare for discovery, respond to motions, logistics involved in setting up the commission, etc. Throughout the interview, [REDACTED] repeatedly reiterated that he stands by his statement that the OMC could be prepared to present a case with as little as three days notice. He believes that, regardless of these statements, members of the DoD front office have an accurate picture as to timelines involved in proceeding to commission.

- [REDACTED] stands by his statements that [REDACTED] is a "clean" case, in that no allegations of torture or mistreatment have been uncovered. [REDACTED] was never at Bagram, so potential issues of abuse at the facility cannot impact the [REDACTED] investigation. [REDACTED] has made repeated statements to the effect that he is associated with al Qaeda.

- [REDACTED] encouraged "professional disagreement" between attorneys, and believes that although the attorneys are of varying ranks, they are intellectual equals. He encouraged officers to debate various issues, and to vocalize concerns.

- Criminal allegations included within the March e-mail were never brought to his attention prior to receiving said e-mail. Previous concerns raised by [REDACTED] and [REDACTED] focused upon policy issues, as well as USAF members' claims that no one would listen to their legal opinions.

- [REDACTED] opines that the aforementioned e-mail was sent only after [REDACTED] consulted with individuals within the Office of the U.S. Air Force Judge Advocate General, and that someone at TJAG provided input relative to the e-mail. [REDACTED] viewed the e-mail as an ultimatum, and believes that the e-mail was a "set-up." [REDACTED] also opined that individuals outside of OMC might have been blind-copied.

- It was clear that individuals from USAF TJAG had an agenda when they met with OMC members in February 2003. TJAG members criticized OMC's readiness, and the experience level of OMC attorneys. It was clear that certain members of OMC had previously communicated with TJAG officers relative to concerns.

- [REDACTED] because [REDACTED] learned that [REDACTED] had made a statement that he "hated [REDACTED]"

- Issues involving a document that was allegedly missing from [REDACTED] folder center upon the fact that [REDACTED] was in possession of a copy of a handwritten note created by [REDACTED] which referenced the fact that an FBI 302 may exist which includes allegations of abuse of [REDACTED]. In reality, [REDACTED] later learned that no such 302 existed. [REDACTED] was confusing the [REDACTED] investigation with another case. [REDACTED] continues to insist that his copy of this note is missing. [REDACTED] claims that this note has absolutely no bearing on the [REDACTED] investigation, and was simply a mistake on the part of [REDACTED]. [REDACTED] stated that allegations to the effect that he acknowledged that he was aware of [REDACTED] allegations of abuse are untrue.

- [REDACTED] stated that allegations that he deliberately provided false information to higher-ups are "ridiculous," and that he has never purposely misled anyone within his chain of command.

- [REDACTED] indicated that statements he made within an e-mail to the effect that [REDACTED] should limit feedback to individuals associated with the Appointing

Authority to oral comments refers to the fact that [REDACTED] believes that [REDACTED] should not

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have been providing legal advice to [REDACTED] and/or BG Hemingway of the OAA. [REDACTED] believes that providing legal advice to individuals within the Office of the Appointing Authority potentially threatened the independence of the OCP.

- With regard to alleged incidences of abuse at Bagram, which came to the attention of members of OCP, [REDACTED] stated that these allegations were referred to USACIDC as soon as they were brought to his attention. There was a delay of approximately 30 days between the time the two OCP members heard of the incident, and when they came to [REDACTED]
- [REDACTED] stated that he is unaware of anyone at OCP ever systematically destroying documents or evidence, and that these allegations are ridiculous.
- The purpose of the "moot court" was for experts to determine whether military prosecutors were talented enough to handle the commission process. There were questions within the front office at DoD as to whether members of OMC were up to the task. A secondary purpose was to assess whether [REDACTED] was the appropriate case for OMC to present as its initial prosecution. All information presented at the moot court was true and accurate. No information was purposely omitted. By no means was the moot court meant to be a full blown mock trial or a "murder board;" however, he would not classify it as a "dog and pony show." [REDACTED] stated that the presentation was, in fact, a "sales pitch;" however, there was frank discussion relative to the merits and potential weaknesses of the [REDACTED] case. Feedback relative to [REDACTED] performance was positive. [REDACTED] performance was sufficient to convince the DoD front office that members of OMC were capable of proceeding. Members of the USAF never approached him with criticisms of the moot court prior to receipt of the March e-mail.
- [REDACTED] stated that he is typically an optimist, and that some individuals may mistakenly believe that he "glosses over problems."
- In stating that commission panels will "only convict," [REDACTED] was referring to the fact that as [REDACTED] he would only bring "slam dunk" cases up for consideration in the first place.
- [REDACTED] acknowledges making statements that Commission panel members were "hand-picked," and believes that the statement is true. However, panel members are handpicked by the Appointing Authority. He has absolutely no input into the selection process. To interpret his comments as meaning that "the fix is in" is ridiculous.
- [REDACTED] has had no discussion with the DoD front office relative to allegations contained within the March e-mail. BG Hemingway has briefed the front office concerning the e-mail. He has no idea whether [REDACTED] [REDACTED] [REDACTED] or any other OMC members have contacted anyone outside of OMC concerning the issues in the e-mail.
- With regard to allegations that [REDACTED] orders, [REDACTED] stated that he had informed OMC members that no one was to contact outside agencies without going through [REDACTED] [REDACTED] failed to consistently follow this procedure, and independently contacted outside agencies.
- [REDACTED] stated that allegations of inappropriate contact with [REDACTED], a [REDACTED] are ridiculous. [REDACTED] did request (at the suggestion of BG Hemingway) that [REDACTED] review and mark up a draft of the OMC trial guide. The trial guide is simply a script that spells out procedures to be utilized during

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the commission process. No specifics relative to cases were ever discussed with [REDACTED] and [REDACTED] are not friends, and have had limited contact.

- [REDACTED] stated that [REDACTED] did have knowledge of a detainee's inclusion on a State Department list of supporters of terrorism, but the issue was determined to be irrelevant in that it did not impact the OMC case against a detainee.
- With regard to allegations that [REDACTED] did not provide a copy of a USS Cole video requested by Haynes, [REDACTED] stated that it was [REDACTED] belief that it would be inappropriate to share case information/evidence with individuals within the DoD front office, in that it could potentially threaten the independence of OMC. [REDACTED] overruled [REDACTED] on this matter since the video at issue was available through multiple public sources. The video was eventually sent to OGC, although [REDACTED] does not know whether Mr. Haynes has had the opportunity to view the tape.
- Upon being questioned as to whether any OMC officers were ever disrespectful towards counterparts, [REDACTED] stated that [REDACTED] was disrespectful to him, [REDACTED], and [REDACTED] when he abruptly walked out during a conversation. [REDACTED] requested permission of [REDACTED] to correct [REDACTED], and permission was granted.
- [REDACTED] stated that an e-mail from [REDACTED] to [REDACTED] was particularly disrespectful in that it stated that BG Hemingway "did not know his ass from a hole in the ground."
- [REDACTED] also believes that the March e-mails generated by [REDACTED], [REDACTED], and [REDACTED] are in and of themselves disrespectful, as they contain very serious allegations that are false.
- [REDACTED] had claimed that [REDACTED] was disrespectful to him during a specific conversation, but [REDACTED] has no specifics relative to the matter.
- [REDACTED] stated that allegations that he informed [REDACTED] that he should feel threatened by [REDACTED], and should be concerned for his personal safety, are absolutely untrue and "ridiculous." Exhibit 39 sets forth details of the [REDACTED] interview.

41. [REDACTED] USA, JTF GTMO, is currently assigned as the [REDACTED] Guantanamo Bay, Cuba. [REDACTED] was first assigned to his current position on [REDACTED]. [REDACTED] provided the following information:

As the [REDACTED] JTF GTMO, [REDACTED] is the [REDACTED] to the Commanding General of GTMO, Brigadier General Miller, USA. Pursuant to direction from BG Miller, [REDACTED] and the personnel assigned to his office are to provide all logistical support necessary for the Military Commissions. [REDACTED] stated that this support encompasses the Office of the Chief Prosecutor, the Defense, witnesses, media personnel and others involved in the commission process. [REDACTED] related that BG Miller was concerned about public opinion; therefore, he did not want personnel assigned to the [REDACTED] JTF GTMO to be involved in the service of process on detainees.

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██████████ related that his conversations with ██████████, USA and other persons involved in the Military Commission process related strictly to logistical matters.

██████████ related that he has no knowledge of any specific allegations of criminal and/or ethical misconduct committed by anyone within the OMC. Exhibit 40 sets forth details of the ██████████ interview.

- 42. Daniel J. Dell'Orto, Principal Deputy General Counsel, Department of Defense was interviewed in his office, in the Pentagon, which is a Sensitive Compartmented Information Facility (SCIF); therefore the interview was not tape-recorded. He provided the following information:

He has known ██████████, personally and professionally, since 1980. Both he and ██████████ served together as Army judge advocates. He was involved in the process of recommending and selecting ██████████ as the ██████████ ██████████ briefed him, Mr. Haynes, and Mr. Cobb on a frequent and regular basis regarding the progress of OMC operations. He met with ██████████ at least weekly, sometimes daily, depending on what was occurring in the OMC at the time.

Regarding the readiness of certain cases (██████████ and ██████████) to go trial, ██████████ briefed him that OMC was "ready to go" rather quickly, i.e. within a few days or a week; however, Mr. Dell'Orto recognized that there were many complex issues involving motions, discovery, and the logistics of getting witnesses and evidence presented. Based on his knowledge of ██████████ day-to-day supervision and management of the OMC prosecutors and the cases within their responsibility, he did not believe that ██████████ committed any criminal violations or ethical misconduct. Further, he did not believe that ██████████ was either derelict or negligent in the execution of his duties. Regarding the mock trial in November 2003, he recalled that Deputy Secretary Wolfowitz requested it in order to assess the OMC's ability to effectively begin the trials of the first couple of designated detainees. He recalled that the comments of the sages/observers were generally positive, and no significant deficiencies were identified. He was not a recipient of any written comments by any of the sages.

On or about March 3, 2004, ██████████ spoke to Mr. Dell'Orto on two separate occasions. ██████████ outlined his concerns about problems he perceived within the OMC. ██████████ did not make any direct allegations against ██████████. Most of ██████████ concerns pertained to ██████████. He did not perceive ██████████ allegations to be criminal in nature. He believed that there was a significant discrepancy between what ██████████ alleged and what he knew to be true, based on his knowledge of OMC operations. He believed that ██████████ might have had a personal agenda in raising these allegations, in that ██████████ may have lacked confidence in his own ability to fully accomplish the difficult tasks he was assigned within OMC. He also speculated that ██████████ might have been frustrated and dissatisfied that he was not assigned as a lead prosecutor on the first few pending cases. As a result of ██████████ discussion with him on March 3, 2004, Mr. Dell'Orto directed BG Hemingway in the Office of the Appointing Authority to "look into" the alleged problems within OMC. He believed that BG Hemingway and ██████████ were taking adequate steps to

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address and resolve [REDACTED] concerns, until March 15, 2004, when [REDACTED] sent the e-mail to [REDACTED]. Exhibit 40 sets the details of the Dell'Orto interview.

43. Paul W. "Whit" Cobb, former Deputy General Counsel, Department of Defense

The interview of Mr. Cobb was conducted at [REDACTED]. He is presently employed as [REDACTED] and [REDACTED]. He provided the following information:

He held the position of [REDACTED] in the Office General Counsel, Department of Defense (DoD), [REDACTED] when he left this office to work in the private sector. [REDACTED] "reported" to Mr. Cobb on a frequent basis, sometimes daily, regarding the progress of OCP operations, including resources, personnel, facilities, and cases of detainees. Regarding [REDACTED] overall performance as the [REDACTED], Mr. Cobb believed [REDACTED] was fully competent and capable of leading and managing the prosecutions. However, on two particular occasions, Mr. Cobb was less than satisfied with [REDACTED] actions: First, sometime in fall of 2003, [REDACTED] "spoke less precisely than I would have preferred" during a media conference when [REDACTED] stated, "trials of detainees are imminent." Mr. Cobb stated that the DoD Public Affairs "had to backpedal" after [REDACTED] comments were made public. Second, on another occasion in the fall of 2003, [REDACTED] gave a presentation to [REDACTED] and another senior legal expert prior to the mock trial. Cobb received feedback from this presentation that indicated [REDACTED] did not have sufficiently detailed knowledge of certain detainee cases. Mr. Cobb attributed this to [REDACTED] not being sufficiently involved in the cases.

To his knowledge, Deputy Secretary Wolfowitz requested the mock trial in November 2003. The primary purpose of the mock trial was to "verify" that OMC prosecutors were capable of handling, and adequately prepared to proceed with the designated detainee cases. The mock trial was not intended to be a full-blown analysis of a particular case. He attended a portion of the mock trial. The subsequent feedback he received from the sages/observers of the mock trial was "generally complimentary" about the performance of [REDACTED] and the merits of the prosecution's case against [REDACTED]. He concurred with this assessment, although he realized that more research was required. He basically believed, "These guys are ready."

Based on BG Hemingway's input [in early 2004], he suggested that [REDACTED] move his office from the Pentagon to the OMC's Crystal City office space to improve his management and supervision of OMC's operations. He first became aware of potential problems within OMC through conversations with BG Hemingway and MG Altenburg in the February/March 2004. He was not a recipient of the March 15, 2004 e-mails, nor was he aware of the specific allegations. He realized there were a lot of potential problems, difficulties, and complex issues to be dealt with as the first detainee cases proceeded toward trial. He did not attribute any of these problems to [REDACTED] or any actions on the part of any prosecutor assigned to OMC. Based on the totality of his knowledge, he does not believe that anyone assigned to OMC committed any criminal violations or ethical

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misconduct. Further, he did not believe anyone was derelict or negligent in the performance of his/her duties. Exhibit 41 sets forth details of the Cobb interview.

44. The investigative team conducted forty-one interviews pertaining to possible criminal wrongdoing and/or ethical misconduct in the OCP of the OMC. The investigative team conducted interviews in the Washington DC metro area; Orlando, Florida; and Guantanamo Navy Base. The team interviewed the majority of the personnel assigned to the OMC, selected members of the Operational Assessment Team, and senior DoD leaders, as well as numerous peripheral witnesses to the matters at issue. The team also conducted a thorough review of relevant documents. The investigative team did not substantiate any of the explicit or implied criminal allegations contained in the e-mail traffic generated by three U.S. Air Force officers [REDACTED], [REDACTED] and [REDACTED] to various members of the OMC. The referenced e-mail traffic addressed several issues pertaining to possible criminal and/or ethical misconduct. The most serious allegations referenced in the e-mail focused on the suppression of information regarding the abuse of detainees at Bagram and the disappearance/destruction of evidence. The investigation found no proof of suppression or disappearance/destruction of evidence. The other specific or implied allegations mentioned in the e-mail traffic (e.g., false statements, dereliction of duty, conduct unbecoming an officer) were also unfounded, as the evidence developed was either inclusive as to misconduct or countered the allegations of misconduct. For example, the investigation revealed that [REDACTED] regularly and candidly briefed his superiors, including Messrs. Haynes, Dell'Orto, and Cobb, concerning the status of the OCP operations. Based on the information gathered during the investigation, however, it is recommended that [REDACTED]

The visit to GTMO afforded members of the team an opportunity to view the handling of detainees first hand. During the course of conducting interviews certain relevant information was obtained, specifically, the need for a security officer with the OMC and that certain information collection responsibilities would be turned over to the DoD on April 30, 2004. These matters were communicated to MG Altenburg.

This project is closed as unfounded.

Exhibits (DCIS Forms 1 summarizing interviews), relevant documents, and audiotapes of interviews are available upon request to the Mid-Atlantic Field Office, DCIS. Contact ASAC [REDACTED] at (703) 604-[REDACTED]

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EXHIBITS

- 1 - DCIS Form 1, Case Initiation, March 29, 2004
- 2 - DCIS Form 1, Interview of [REDACTED] March 30, 2004
- 3 - DCIS Form 1, Interview of [REDACTED] April 1, 2004
- 4 - DCIS Form 1, Interview of [REDACTED] March 31, 2004
- 5 - DCIS Form 1, Interview of [REDACTED] April 2, 2004
- 6 - DCIS Form 1, Interview of [REDACTED] April 3, 2004
- 7 - DCIS Form 1, Interview of [REDACTED] April 3, 2004
- 8 - DCIS Form 1, Interview of [REDACTED] April 3, 2004
- 9 - DCIS Form 1, Interview of [REDACTED] March 31, 2004
- 10 - DCIS Form 1, Interview of [REDACTED] March 31, 2004
- 11 - DCIS Form 1, Interview of [REDACTED] April 2, 2004
- 12 - DCIS Form 1, Interview of [REDACTED] April 3, 2004
- 13 - DCIS Form 1, Interview of [REDACTED] April 2, 2004
- 14 - DCIS Form 1, Interview of [REDACTED] April 2, 2004
- 15 - DCIS Form 1, Interview of [REDACTED] April 7, 2004
- 16 - DCIS Form 1, Interview of [REDACTED] April 9, 2004
- 17 - DCIS Form 1, Interview of [REDACTED] April 10, 2004
- 18 - DCIS Form 1, Interview of BG Hemingway, April 6, 2004
- 19 - DCIS Form 1, Interview of [REDACTED] April 8, 2004
- 20 - DCIS Form 1, Interview of [REDACTED] April 7, 2004
- 21 - DCIS Form 1, Interview of [REDACTED] April 6, 2004
- 22 - DCIS Form 1, Interview of [REDACTED], April 9, 2004
- 23 - DCIS Form 1, Interview of [REDACTED] April 8, 2004
- 24 - DCIS Form 1, Interview of [REDACTED] April 16, 2004
- 25 - DCIS Form 1, Interview of [REDACTED] April 7, 2004
- 26 - DCIS Form 1, Interview of [REDACTED] April 7, 2004
- 27 - DCIS Form 1, Interview of [REDACTED] April 8, 2004
- 28 - DCIS Form 1, Interview of [REDACTED] April 8, 2004
- 29 - DCIS Form 1, Interview of [REDACTED] April 9, 2004
- 30 - DCIS Form 1, Interview of [REDACTED] April 12, 2004
- 31 - DCIS Form 1, Interview of [REDACTED] April 12, 2004
- 32 - DCIS Form 1, Interview of [REDACTED] April 12, 2004
- 33 - DCIS Form 1, Interview of [REDACTED] April 15, 2004
- 34 - DCIS Form 1, Interview of [REDACTED] April 14, 2004
- 35 - DCIS Form 1, Interview of MG Fiscus, April 14, 2004
- 36 - DCIS Form 1, Interview of MG Rives, April 16, 2004
- 37 - DCIS Form 1, Interview of [REDACTED] April 15, 2004
- 38 - DCIS Form 1, Interview of [REDACTED], April 16, 2004
- 39 - DCIS Form 1, Interview of [REDACTED] April 19, 2004
- 40 - DCIS Form 1, Interview of [REDACTED] April 21, 2004
- 41 - DCIS Form 1, Interview of Mr. Dell'Orto, April 20, 2004
- 42 - DCIS Form 1, Interview of Mr. Cobb, April 22, 2004

Prepared by ASAC [REDACTED] Mid-Atlantic FO

APPR: [REDACTED]

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