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DATE: 02-17-2010  
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### Military Commissions

[www.defenselink.mil/news/commissions.html](http://www.defenselink.mil/news/commissions.html) contains the following information:

- Military Commission Procedures, Orders & Instructions
- GTMO Detainee Process
- Appointing Authority Regulations
- Biographies of Key Military Commissions Personnel
- Links to Court Motions (46 total)
- Trial Guide
- Briefing Transcripts from Hearings
- Photographs

Four GTMO detainees have been charged with conspiracy to commit terrorism among other offenses. All four defendants have been appointed counsel:

1. Salim Hamdan (ISN US9YM-0049) Trial scheduled: December 7-21, 2004. Twenty-two (22) outstanding motions. Defense Motions: 18. Prosecution: 4.
2. David Hicks (ISN US9AS-0002) Trial scheduled January 10, 2005 until completion. Eleven (11) outstanding motions. Defense Motions: 5. Prosecution Motions: 6.
3. Al Qosi (ISN US9SU-0054) Trial Scheduled February 8, 2005 until completion. Nine (9) outstanding motions. Defense Motions: 5. Prosecution Motions: 4.
4. Al Bahlul (ISN US9YM-00039) Trial not scheduled. Five (5) outstanding motions. One Defense Motion (pro se motion). Prosecution Motions: 4.

The Presiding Officer, COL Brownbeck, has not ruled on most outstanding motions, therefore the prosecution has not provided witness or exhibit lists. The Prosecution has preliminarily requested in excess of eighty (80) FBI witnesses for trial. Protective orders have been filed to protect the identities of the agents. Witness preparation has been minimal to this point.

The Military Commission Panel consists of 4-5 Field Grade (O-5 or O-6), Non-JAG Officers and 1 JAG who acts as Presiding Officer, 1-2 alternates.

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OMC consists of a Chief Prosecutor, Robert Swann - COL USA, JAG 26 yrs, 20+ yrs experience gov't trial atty, defense counsel, appellate atty and military judge.

USMC Deputy Chief Prosecutor Carol Joyce - COL USMC 23 yrs, JAG 15 yrs, Special Asst. U.S. Atty to Eastern District North Carolina, 300+ cases as Prosecutor and Defense counsel.

[REDACTED] - COL USA 20 yrs Senior Litigation Partner Private Law Firm in CA, CA State Senator, Legal Advisor to [REDACTED]

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OMC Team Chiefs

[REDACTED] CMDR USN 20 yrs, JAG 14 yrs, 100+ contested trials. Four in US District Court

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[REDACTED] LTC USMC 17 yrs, JAG 9 yrs, 400+ criminal cases -Chief Trial Counsel [REDACTED] MCAS

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[REDACTED] LTC USMC 17 yrs, JAG 9 yrs, 400+ criminal cases -Chief Trial Counsel Camp Lejeune USMCB -2<sup>nd</sup> Chair Prosecution- Aviano Case

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[REDACTED] LTC USA 20 yrs, JAG 12 yrs, served as lead trial counsel on several high profile cases including a capital murder case.

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[REDACTED] MAJ USA 8 yrs, 8yrs JAG, 86 criminal cases, 19 contested.

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OMC Team members:

[REDACTED] CAPT USAF 2 yrs JAG OMC 1<sup>st</sup> assignment

[REDACTED] LT USN 3yrs JAG - OMC 2<sup>nd</sup> assignment

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[REDACTED] CAPT USA 3yrs OMC 2<sup>nd</sup> assignment

[REDACTED] MAJ USA 10yrs- arrived OMC August 2004.

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### FBI's Cooperation

The FBI has supported the Military Commission process extensively. OMC makes requests for FBI documents and FBI personnel through the Office of General Counsel (OGC) and the Military Liaison and Detainee Unit (MLDU). All requests are addressed immediately and currently over 200 FBI documents have been provided for use at trial.

Records Management Division coordinated a bureau-wide effort to respond to OMC's discovery requests. The FBI received the requests on July 23, 2004 and documents are available for OMC review starting October 1, 2004. FBI continues to support evidence, document and witness assistance requests through RMD/OGS/MLDU.

OGC has dispatched an AGC to GTMO who will brief FBI witnesses on Commission rules and procedures and be available in the courtroom to address FBI issues. MLDU will continue to provide a SSA to coordinate all requests related to the military commissions.

### Unresolved Issues

Transportation/Lodging: FBI transportation consists of one flight to/from GTMO every other week. Military transportation consists of military flights on a first come, first serve basis out of Andrews Air Force Base (very limited availability). Therefore, FBI personnel testifying in trial, transporting evidence and observing proceedings will spend considerable time at GTMO waiting for transportation to/from GTMO. [Solution: Increase number of FBI flights to transport FBI agents on/off GTMO to the current level of 1 flight per week.]

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FBI does not have available resources for lodging or transportation while at GTMO for the number of FBI witnesses OMC has identified. FBI has not been advised whether OMC has secured lodging/transportation for FBI witnesses. The limited transportation available off GTMO will also affect the lodging issue.

Witness Preparation: OMC has not provided any comprehensive witness preparation for FBI agents. OMC has not provided the FBI with the required release approvals from other agencies

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Without these releases, FBI agents face uncertainty on the stand with regards to the scope of their testimony. [Solution: OGC is providing AGC to assist FBI witnesses]

MISC: The Prosecutor's lack of Counterterrorism experience has led them to utilize an overbroad approach to document requests from the FBI. [Solution: Rulings in the 1<sup>st</sup> four cases will limit this approach]

Some case prosecutive theories promulgated by OMC prosecutors are not consistent with FBI analytical conclusions (not true with the 1<sup>st</sup> 4 cases). [Solution: OMC prosecutors should meet with ITOS1 personnel to ensure their theories are consistent with FBI analysis]

The charging scheme (Conspiracy to commit war crimes) requires heavy reliance on FBI investigations (PENTTBOM COLEBOM TANBOM) [Solution: OGC/MLDU/SDNY should monitor disseminations and proceedings to limit impact on FBI investigations]

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