

Thomas J. Fiscus

From: Fiscus Thomas Maj Gen AF/JA
Sent: Wednesday, March 17, 2004 4:21 AM
To: Rives Jack Maj Gen AF/JA
Subject: FW: Allegations of misconduct and unprofessionalism against Chief Prosecutor

Here it is. TJF

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

From: Turley Andrew Col AF/JAR
Sent: Tuesday, March 16, 2004 8:26 AM
To: Fiscus Thomas Maj Gen AF/JA
Cc: Rives Jack Maj Gen AF/JA
Subject: FW: Allegations of misconduct and unprofessionalism against Chief Prosecutor

Sir:

Here is some additional information from Capt Wolf. I did not know she would be sending a further email to Col Borch and the rest of the office.

Thanks,
Andy

F. ANDREW TURLEY, Colonel, USAF
Reserve Advisor to The Judge Advocate General
DSN 224-3191
COMM 703-614-3191
andrew.turley@pentagon.af.mil

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

From: Wolf, Carrie, CPT, DoD OGC
Sent: Monday, March 15, 2004 2:02 PM
To: Turley Andrew Col AF/JAR
Subject: FW: Allegations of misconduct and unprofessionalism against Chief Prosecutor

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

From: Wolf, Carrie, CPT, DoD OGC
Sent: Monday, March 15, 2004 13:41
To: Borch, Fred, COL, DoD OGC; Davenport, Teresa, CAPT, DoD OGC; Lang, Scott, CDR, DoD OGC; Brubaker, Kurt, LtCol, DoD OGC; Couch, Stuart, LtCol, DoD OGC; Sullivan, Ronald, MAJ, DoD OGC; Trivett, Jr, Clayton, LT, DoD OGC; Khanna, Karunesh, Mr, DoD OGC; Keegan, Michael, Mr, DoD OGC; Ambrose, Bruce, LtCol, DoD OGC
Cc: Bertotti, James, CW3, DoD OGC; Preston, Robert, MAJ, DoD OGC; Carr, John, CPT, DoD OGC
Subject: RE: Allegations of misconduct and unprofessionalism against Chief Prosecutor

Sir,

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

9/4/2006

The additional "situations" that come to mind:

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

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

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

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

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

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

he already has.

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

Carrie

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

From: Borch, Fred, COL, DoD OGC

Sent: Monday, March 15, 2004 11:29

To: Davenport, Teresa, CAPT, DoD OGC; Lang, Scott, CDR, DoD OGC; Brubaker, Kurt, LtCol, DoD OGC; Couch, Stuart, LtCol, DoD OGC; Sullivan, Ronald, MAJ, DoD OGC; Wolf, Carrie, CPT, DoD OGC; Trivett, Jr, Clayton, LT, DoD OGC; Khanna, Karunesh, Mr, DoD OGC; Keegan, Michael, Mr, DoD OGC; Ambrose, Bruce, LtCol, DoD OGC

Cc: Bertotti, James, CW3, DoD OGC; Preston, Robert, MAJ, DoD OGC; Carr, John, CPT, DoD OGC

Subject: Allegations of misconduct and unprofessionalism against Chief Prosecutor

Importance: High

All:

9/4/2006

Please read below.

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

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

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

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

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

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

COL Borch

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

From: Carr, John, CPT, DoD OGC

Sent: Monday, March 15, 2004 07:56

To: Borch, Fred, COL, DoD OGC

Cc: Preston, Robert, MAJ, DoD OGC; Davenport, Teresa, CAPT, DoD OGC; Wolf, Carrie, CPT, DoD OGC

Subject: RE: Meeting with Colonel Borch and myself, 4:00 p.m. today, Col Borch's office

Sir,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A few examples include:

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

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

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

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

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

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

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

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

You have repeatedly said to the office that the military panel will be handpicked and will not acquit these detainees, and we only needed to worry about building a record for the review panel. In private you have went further and stated that we

are really concerned with review by academicians 10 years from now, who will go back and pick the cases apart.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

our office has been doing for the last 14 months.

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

v/r,

Capt Carr

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

From: Preston, Robert, MAJ, DoD OGC

Sent: Thursday, March 11, 2004 16:19

To: Davenport, Teresa, CAPT, DoD OGC

Cc: Borch, Fred, COL, DoD OGC

Subject: RE: Meeting with Colonel Borch and myself, 4:00 p.m. today, Col Borch's office

Ma'am

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

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

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

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

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

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

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

9/4/2006

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

PS: John's not back yet. I think he was at FBI this afternoon.

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

From: Davenport, Teresa, CAPT, DoD OGC

Sent: Thursday, March 11, 2004 13:36

To: Preston, Robert, MAJ, DoD OGC; Carr, John, CPT, DoD OGC

Cc: Borch, Fred, COL, DoD OGC

Subject: Meeting with Colonel Borch and myself, 4:00 p.m. today, Col Borch's office

Major Preston and Captain Carr,

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

VR/R

Teresa J. Davenport
Capt, JAGC, USNR
Office of Military Commissions
703-602-4173

9/4/2006
