

DEPARTMENT OF DEFENSE INSPECTOR GENERAL

OFFICE OF ASSISTANT INSPECTOR GENERAL FOR INVESTIGATIONS

DEFENSE CRIMINAL INVESTIGATIVE SERVICE MID-ATLANTIC FIELD OFFICE 1111 JEFFERSON DAVIS HIGHWAY ARLINGTON, VA 22202

REPORT OF INVESTIGATION

-29-MAR-2004-60DC-Z1/U

April 30, 2004

PROJECT: MILCOM

DISTRIBUTION

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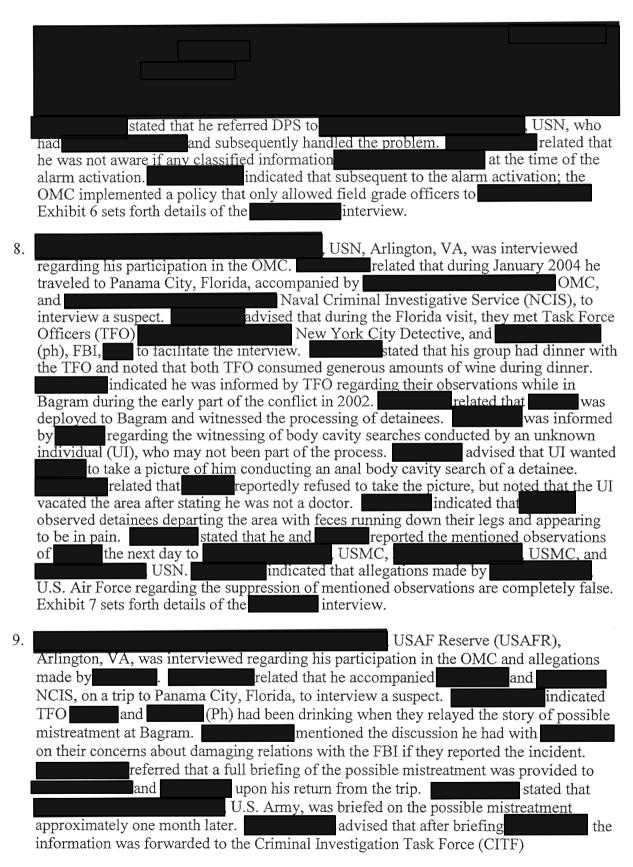
NARRATIVE

- 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 (and a manager (Assistant Special Agent in Charge and a nanager (A
- 3. 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. indicated that Mr. William Haynes, General Counsel of the DoD, appointed him. stated that the OAT conducted interviews of OMC personnel in Crystal City, related that interviewees USAF, at the Pentagon. were allowed to read the OAT appointment letter to help them understand the scope and purpose of the interviews. 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. related that OAT members took their own notes and USAF, recorded the proceedings. Exhibit 2 interview. sets forth details of the
- 4. USAF, Washington, DC, was interviewed regarding her participation in the OAT. related that she was the recorder for the OAT. Stated the OAT conducted interviews of OMC personnel in Crystal City. indicated that all interviews were completed in one day. 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. related that the OAT strictly focused on issues of structure and not

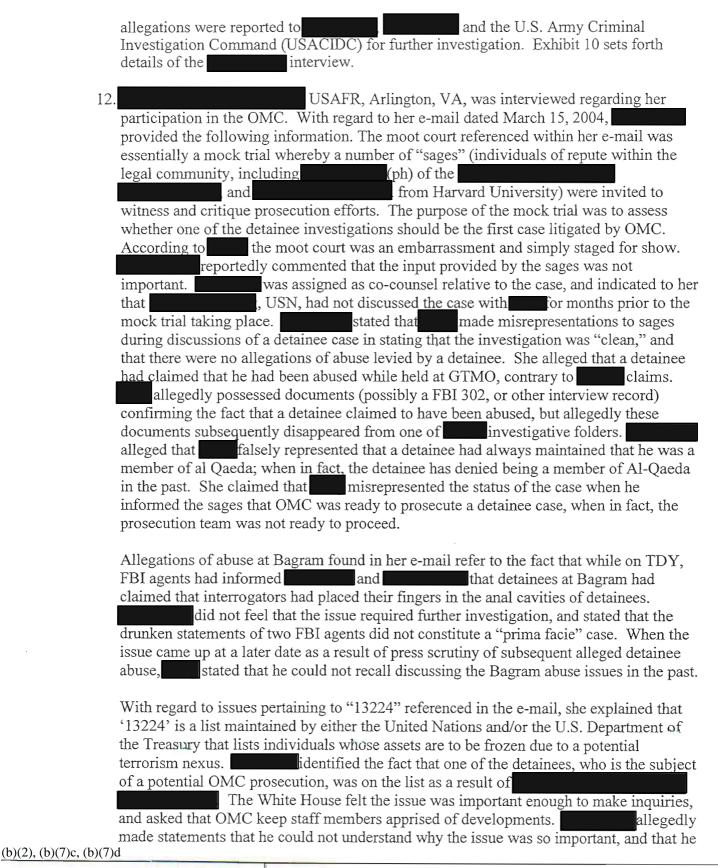
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	criminal allegations when interviewing OMC personnel. suspected that criminal investigative matters would be handled by another entity. indicated that the OAT members took their own notes and believes , U.S. Navy, took custody of the notes for safekeeping. Exhibit 3 sets forth details of the interview.
5.	D.S. Navy (USN), Washington, DC, was interviewed regarding her participation 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. basically "keyed off" the e-mail complaints, but did not focus on any criminal or ethical misconduct. 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). referred that a number of people were concerned with the "poisonous atmosphere" created by three U.S. Air Force officers: and Exhibit 4 sets forth details of the interview.
6.	was interviewed regarding her participation in the OMC. Indicated that she is a full-time Assistant U.S. Attorney with the U.S. Attorney's Office, related that she also served as a for the U.S. Navy. Indicated that she is currently the with OMP. Indicated she was working for the USAF, on the OMP discovery team. Indicated she was working for the USAF, on the OMP discovery team. Indicated that research conducted by an analyst assigned to the OMC 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. Indicated that Al-Qaeda suspects were not taped. Indicated that her office was currently seeking more information detailing the circumstances surrounding the tape. Indicated that Her office was currently seeking more information detailing the circumstances surrounding the tape. Indicated that the U.S. Army (USA), had reportedly been uncooperative with the OMP regarding delivery of charges to Al-Qaeda suspects. Indicated that the uncooperative with the OMP regarding delivery of charges to Al-Qaeda suspects. Indicated that the uncooperative with the OMP regarding delivery of charges to Al-Qaeda suspects. Indicated that the uncooperative with the OMP regarding delivery of charges to Al-Qaeda suspects. Indicated that the uncooperative with the OMP regarding delivery of charges to Al-Qaeda suspects. Indicated that the uncooperative with the OMP regarding delivery of charges to Al-Qaeda suspects. Indicated that the uncooperative with the OMP regarding delivery of charges to Al-Qaeda suspects. Indicated that the uncooperative with the OMP regarding delivery of charges to Al-Qaeda suspects. Indicated that the uncooperative with the OMP regarding delivery of charges to Al-Qaeda suspects. Indicated that the uncooperative with the OMP regarding delivery of charges to Al-Qaeda suspects.
7.	was interviewed regarding his participation in the OMC. indicated he was the legal administrator for the OMC and was not interviewed by the OAT. related that he is not aware of any criminal or unethical conduct on the part of OMC personnel.



	representative NCIS. referred that he had no knowledge of unethical or criminal conduct committed by OMC personnel. mentioned that actions might be viewed as unethical if he had sent blind copies of allegations via e-mail messages outside OMC channels. opined that 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 interview.
	USMC, Fort McNair, Washington, DC. In January 2002, was assigned as a special advisor to the DoD General Counsel, working for Mr. Havnes, General Counsel, and Mr. Paul W. (Whit) Cobb, Deputy General Counsel. was tasked with drafting the rules for military commissions in preparation for trials of subjects captured in the war on terrorism. 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, was designated as the acting was designated as the acting approximately when replaced him. 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 a recipient of the e-mails authored by and nor did he actually know that they wrote them; however, he became aware of the general content of the e-mails from Mr. Cobb, (Public Affairs Officer, DOD-OGC), and MG John Altenburg (recently designated as Appointing Authority, OMC). Altenburg (recently designated as Appointing Authority, OMC). as a highly optimistic individual who often "shoots from the hip." In November 2003, served as an observer to the mock trial that was conducted by OMC. provided substantive critiques to the process. 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, 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 interview.
(b)(2), (b)(7)c	interviewed regarding his participation in the OMC. reported to the OCP in August 2003. described the most daunting challenge facing the OCP with respect to prosecuting terror suspects is the lack of interagency cooperation. 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. refuted the assertion in e-mail that alleged suppression of FBI allegations of abuse of detainees at the Bagram Detention Facility. 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 the land provided e-mails and documentation that illustrated the abuse



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 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 periodically violated this requirement and/or requested others at OMC sidestep the requirement.	ve
With regard to statements pertaining to "appearance of impropriety," stated that she and others within OMC question whether OMC can meet the President's Milita Instructions, which call for a fair and impartial commission when maintains 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.	s a
indicated he was a former and had been a Special Agent with NCIS since 2001. It is stated he has been assigned to the CITF for approximately seven months. It is acknowledged he traveled to Florida and met with and and 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, astated he did not recall all the specifics. However, he acknowledged that one of the FBI representatives was tellin war stories regarding a person who was conducting rectal examinations on detainees in Afghanistan. It is stated he believed the person might not have been a doctor. However, he advised that he does not recall if abuse was discussed. If 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.	of g

14.	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 about how the OCP was preparing to go to trial. Stated he was repeatedly told by and 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. refuted this assertion. He stated that the OCP is not currently prepared to adequately prosecute cases. According to 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 e-mail which read "Additionally, of the FBI related last week that he called to about the systematic destruction of statements of the detainees, and said that this did not raise any issues." advised that this statement did not imply that the OCP was destroying statements or evidence. Lastly, advised that the "USS Cole video" referenced in 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 interview.
15.	was interviewed regarding his participation in the OMC. indicated that he was detailed to the OMC in December 2003 from pursuant to a Presidential Order for other Government agencies to assist DoD in the military commissions. He continued in this detail until approximately when he was directed to return to until the problems within OMC were addressed and resolved. The related that prior to his assignment to OMC in the 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. The related that he has extensive experience as a criminal trial litigator, particularly in relation to international terrorism cases. He tried cases in the He is also a has no direct knowledge of any criminal wrongdoing, misconduct, or ethical violations on the part of any omc 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. did not believe that anyone willfully and knowingly misinterpreted anything. Delieves that the problems within OMC which were outlined in the series of e-mails by and the DoD General Counsel's Office. Leated that 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 interview.
16.	, USA, OMC, Arlington, VA, was interviewed

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stated that he has been assigned as

regarding his participation in the OMC.

	a prosecutor in the OCP on the
	was aware of the allegations of criminal wrongdoing and/or
	ethical misconduct cited by in an e-mail, dated March 15, 2004.
	attended the mock trial and refuted allegations that lied or made
	misrepresentations during the trial. was tasked with presenting the first case
	for prosecution in the OMC. stated that
	disagreed on how to proceed with this prosecution. advised that he did not
	agree with assertion at the trial that the first case would be ready to proceed
	in three days. He believed that would need one to two more weeks to be
	ready. knows of no attempt to suppress FBI allegations of alleged detained
	abuse. He went on to say that the individuals who heard the allegations,
	briefed, and about the foregoing
	which resulted in further investigation into the matter.
	did not believe destroyed or hid evidence. 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. had no
	knowledge about whether or not the "USS Cole" video was given to Mr. Haynes. He
	recalled that once told him that the OCP would win some cases and possibly
	lose some of the cases. Exhibit 15 sets forth details of the interview.
	Agent in Charge/Deputy Commander of the CITF. was cooperative during the interview but refused to allow the session to be recorded. recall receiving some information from OMC regarding suspected abuse of detainees. He indicated that relephonically notified him that OMC personnel were made aware of possible abuse of detainees during in-take processing at Bagram. According to stated OMC Attorney 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. also noted the individual in Bagram reportedly vacated the area after the FBI representative questioned him about his status. advised he subsequently reported the information to CITF Commander USA. He further advised that directed him to pass the information onto USACIDC for action. 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. 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 interview.
18.	believes that some of the detainee cases are almost ready for trial. related that any statement that the prosecution could be
(b)(2), (b)(7)c	ready to go in three days was not accurate. He does not recall the aforementioned

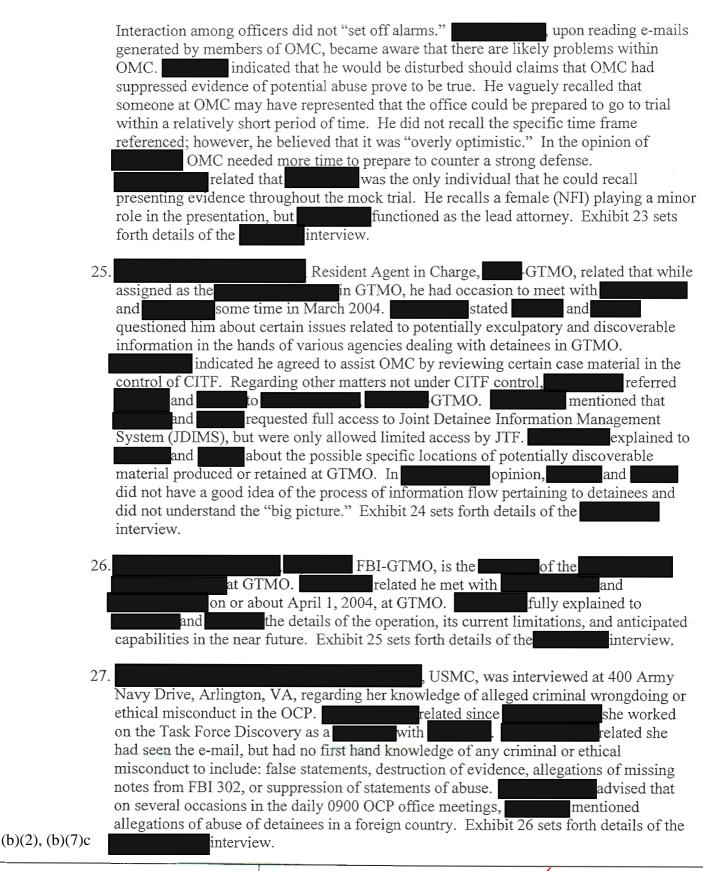
statement being briefed to higher authorities.	believes challenges faced by
the prosecution include interagency cooperati	on, proper classification of information, and
discovery issues. does not rec	all anyone making any misrepresentations
of facts to MG Fiscus, USAF; MG Rives, US.	AF; or USAF during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

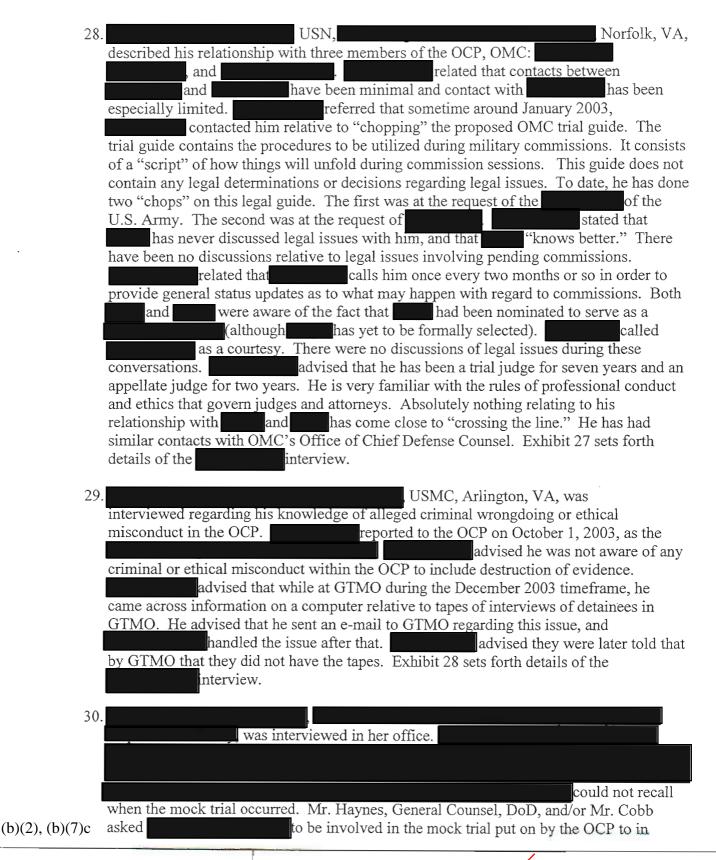
19. Brigadier General Thomas Hemingway (Hemingway), USAF, is currently Legal Advisor to the Appointing Authority, OMC. He considers the majority of the allegations relative to potential destruction of evidence to be management/leadership related issues versus allegations of criminal wrongdoing. In his opinion, 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 was an issue of a leadership/management topic countermanding policy set by 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.	. USAF, is a
	currently assigned to the OMC. has been in her current assignment
	since With regard to the allegations of criminal wrongdoing and/or
	ethical misconduct, 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.
	witnessed an incident involving and USN. She indicated that on
	one occasion, "exploded" at in a hallway in OMC. In
	opinion, tone of voice and demeanor were disrespectful to She recalled an
	incident where reprimanded for insubordinate conduct toward
	recalled another incident where was told by
	to leave his office after a heated discussion. She recalls "stomping out" of the

	office. recalls an incident in February 2004 where she took a message for from an aide to a Congressman or Senator who was calling to reschedule a luncheon date with She related that she took this message and placed the message on computer. Stated that came to her and questioned her whether anyone else knew about the message. Upon responding that she had not told anyone about the message, told her to forget about it. Later, 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. responded that she had not mentioned the message to anyone. then asked her whether anyone had asked her to watch him, or words to that effect. Exhibit 19 sets forth details of the interview.
21.	United States Attorney's Office, regarding his knowledge of alleged criminal wrongdoing or ethical misconduct in the OCP, OMC. advised that from through through 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 replied in the negative. Regarding allegation of abuse of detainees, 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. "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. 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
22. (b)(2), (b)(7)c	USAF, the Pentagon, is currently the the USAF. has been in his present assignment since stated that any information that he had regarding any of the allegations came from other people, namely and He related that he, MG Fiscus, and MG Rives visited the OMC in the latter part of 2003. indicated that this visit was prompted by concerns raised by and about the operation of the OMC. He stated that and presented a public relations type of briefing on the status of the first detainee cases ready for prosecution. related that neither he nor MG Fiscus nor MG Rives asked any detailed questions of or concerning the cases. He

	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 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 lid not have a large enough staff. Secondly, that did not have the most experienced staff. He specifically referred to who was of the OCP mission. Stated that had never tried a case, and this appeared to be "a disconnect." Exhibit 21 sets forth details of the interview.
23.	FBI, and is temporarily detailed to JTF GTMO. 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,
	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. 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, 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 interview.
	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. 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. 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. stated he has been a prosecutor since 1989 and has tried over 50 cases. 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.
(b)(2), (b)(5), (b)(7)c	He referred that throughout the period that was detailed to OMC, never complained about being underutilized at OMC nor stated that he was being treated poorly. In the opinion of 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.





	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. 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. provided an introduction of the case to the attendees. In her opinion, the lead prosecutor, appeared highly competent. Upon completion of the mock trial, 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. was under the impression that the
	One or more of the prosecutors in the OMC echoed this same sentiment to was asked if any allegations of detainee abuse were raised in the mock trial. 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 interview.
31.	U. S. Army Reserve (USAR), was interviewed regarding his participation in the OMC. As background, reported to active duty on March 1, 2004, and was assigned to the OCP. has assisted on the discovery team. Approximately three weeks prior to his interview, while working with the he heard of a detainee who had claimed abuse while in detention. he heard of the abuse issue. does not know what did with the information. believed that all allegations of detainee abuse were to be relayed to 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 interview.
32. (b)(2), (b)(5), (b)(7)c	Appointing Authority (OAA). advised he arrived for duty with the OMC on March 12, 2004. He further advised he was subsequently assigned to the OAA as a 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. had no substantive information to add to this investigation. Exhibit 31 sets forth details of the interview.

Army Navy Drive, Arlington, VA, regarding his knowledge of alleged criminal wrongdoing or ethical misconduct in the OCP. As background, related he reported to active duty on March 1, 2004 to the OCP. 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 interview.

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

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35.	
	knowledge of alleged criminal wrongdoing or ethical misconduct in the OCP. is assigned to as a but is
	currently "on loan" to the OCP:
	that be reassigned from the to the OMC to conduct research. The
	agreed, and worked at the OMC from February 2003 to June 2003. He
	initially did not have a clearance and therefore, did not have access to
	classified information. 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.
	looked at 2 or 3 of these cases and drafted some of the initial charges. He also worked
	with conducting research to determine how to prosecute Iraqis either in the
	OMC or in an International Tribunal. Initially, was the was the
	case. He had not heard of any allegations of abuse. queried
	information from the FBI and CITF contained on computer discs to retrieve
	statements. Upon reviewing the statements, and did not find any reference to abuse. It is did find statements indicating fair treatment by captors.
	understood that would ultimately be the lead prosecutor on the
I	case. Exhibit 34 sets forth details of the 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
	and 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 and and 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 were at this meeting. He stated that 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 and questioned a little closer. MG Fiscus recalled
	that 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, was speaking in terms designed to present a public view.
	According to MG Fiscus, provided a more candid assessment in the private
	meeting. Upon being questioned as to the OCP's state of readiness, MG Fiscus opined
	sensed a strong desire within the administration to move the cases forward.
	MG Fiscus recalled that there was some concern expressed by
	that was trying to put some sort of date on when they could move
	forward with the cases, but and 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 and regarding the problems at OCP. MG Fiscus indicated that a
	couple days later BG Hemingway advised him that had been directed to
	spend full time at the OCP. MG Fiscus stated that about six weeks later,
	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 reportedly singled out the USAF
	members as not being team players and for calling his leadership into question.
	MG Fiscus also noted 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 and and regarding the issues at OCP. It is his understanding that
	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, 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,
	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 presence (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 briefing such as timeframe and the nature of
	the interagency cooperation. He explained that given 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.
27	Major Consul Inde I Diver Denote Inde Advente Consul IICAD
3/.	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, relayed reports from and 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,
	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.
	visited the OCI of Teoridaly 24, 2004. IVIC KIVES added that brior to visiting the U.P.

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

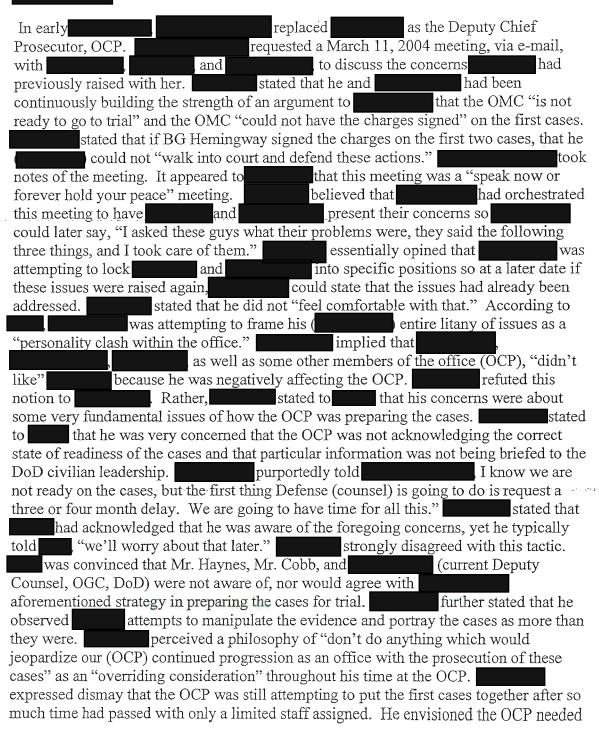
briefing, he and MG Fiscus asked questions of and his staff and this caused real concern. He went on to say if they had just listened to the briefing without asking questions, they would have left there feeling that OCP had great people who were enthused about what they were doing and the prosecution 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 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 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 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 any statements that were materially false to him, MG Rives said it was nothing that he

	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 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 honestly believed that they were ready. He recounted that in late Fall 2003, he and MG Fiscus met with and 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 <i>ex parte</i> discussions between and a person potentially making the judicial decision in these cases (constant) could be ethical misconduct. He added that questioning of and loyalty was not handled professionally. Exhibit 36 sets forth details of the MG Rives interview.
38	at OMC. The ported to OMC during the first week of March 2004. As a result of his brief tenure at OMC, which 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 interview.
39	On April 15, 2004, 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. was sworn, and voluntarily provided the following information.
	BACKGROUND
	was assigned to the OCP as an assistant prosecutor on and left that position on the Branch He stated he was "shocked" at being assigned as a young 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, spoke with USAF, OCP prosecutor. told 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 and were already assigned as prosecutors. For
ļ	reference, is a prosecutor; is a prosecutor; was the Deputy Chief Prosecutor (in March 2004 when he was reassigned from that duty); is a prosecutor; and was the Chief Prosecutor. arrived for duty as a prosecutor at the OCP about two weeks after arrived.
	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 case. was the lead prosecutor. On December 22, 2003, the OCP was reorganized. was reassigned to be in charge of Task Force (TF)

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

GENERAL OVERVIEW OF THE OFFICE



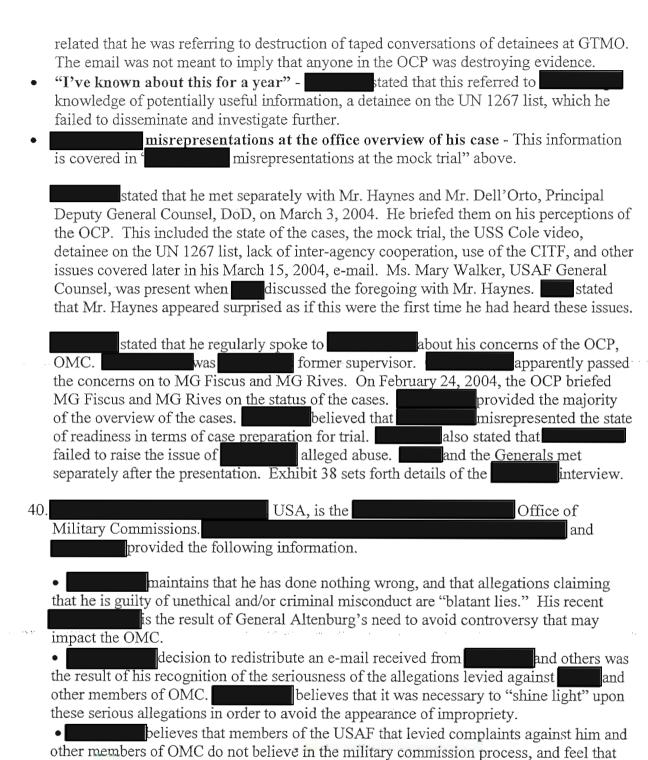
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about 30 more prosecutors to assist in furthering the cases. stated that made a statement to the media on February 9, 2004, to the effect that "Trials are imminent." According to made these types of "overblown" statements all too often. felt that inaccurate representations of the OMC's state of readiness constituted a dereliction of duty.
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. told that he (did not need to know the details of all the cases.
believed the CITF was set up to support the OCP. 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.
E-MAIL DATED
defined the email dated and sent the same day as "extremely important" to document his concerns. described the meeting on as the impetus to write the e-mail. He felt he needed to make a record of all the concerns he and because there was the potential that might contend the issues had been addressed when in fact they had not. Stated that after his email went out, called him and into his office and basically called them liars. Stated that he wrote the e-mail on in collaboration with and with some input from According to 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 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.
addressed the following comments made in the e-mail.
misrepresentations at the mock trial: The mock trial occurred on November 6, 2003. 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. was slotted to prosecute the first case against a detainee identified as "was aware that had alleged abuse while in the custody of a foreign country. told the mock trial attendees that had made no allegations of abuse. had seen notes referencing an FBI 302 that indicated

advised him of misrepresentations at the mock to notes were missing from notebook. purpo own personal safety, do not bring this up to Let :	e case and to make ould raise. also stated allegations of abuse or could not find went to and trial and that ortedly told "For your me do it."
believed that was unaware of many pertinent facts case. For example, was aware that made	e 38 statements that are
documented. However, represented that there we	re only 24 statements.
Further, the theory of the case against a general co	
of the crime were not adequately addressed. was also contained analysis was not done and provided to the sages.	
given notebooks full of documents containing limited useful	
foregoing was not being briefed to the DoD Office of Genera	
representatives at the mock trial. felt that the sages actual state of readiness. He stated that they would be "shock	
not been taken to prepare the cases. believed the pe	
OMC would be shut down if the DoD civilian leadership kne	
believed that he heard state at the mock trial that t trial in three days.	
supported by other members of the OCP.	maccurate and generally not
Suppressing FBI allegations of abuse at Bagram - Accord	
prosecutors at the OCP, and and were on January 2004 when FBI agents purportedly told them in confi	a trip in Florida mid
detainee abuse at the Bagram Detention Facility. The day	
he told about the allegations. purportedly told	that he had advised
and of the allegations and not to brief	that same day. on this due to the fact
that the FBI agents relayed the allegation in confidence. If	
resulting action might be a degradation of the relationship bet	ween the OMC and the FBI
Approximately one month later spoke to	about the foregoing.
day to report the allegations to the USACIDC.	and that same
	stated that was
reluctant to turn over this video because it was intended to be	
evidence against According to work work could be construed as a weak piece of evidence and if Mr. Ha	as aware that this video
become aware of how little evidentiary value the tape offered.	
The disappearance/destruction of evidence - reite	erated that his copy of
notes detailing the FBI 302 was missing from his notel	
accuse anyone of taking the notes. Regarding the destruction	or evidence,

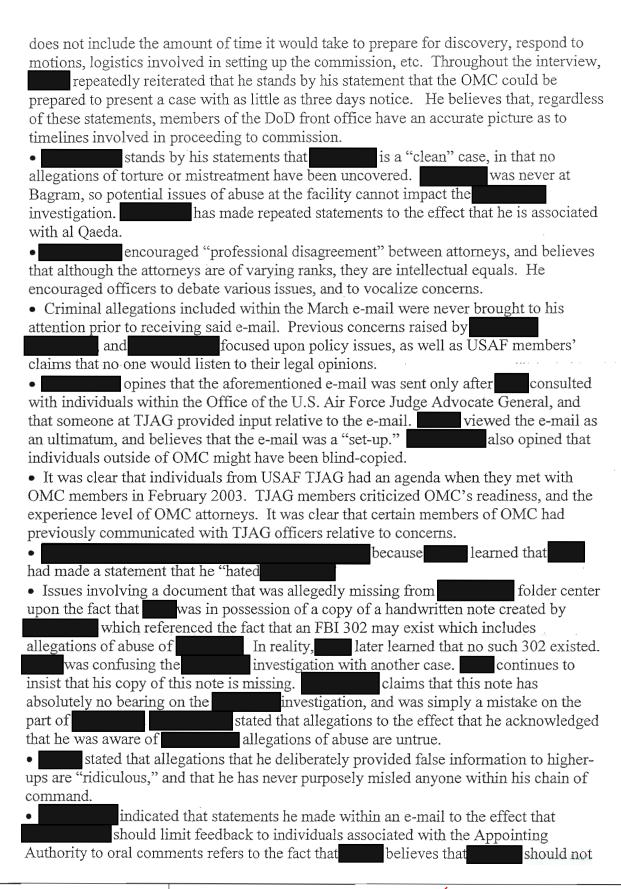


• acknowledges making statements that OMC was ready to proceed to prosecution with three days notice. However, he qualifies his statements by indicating that he is only referring to presentation of the "case in chief." The cases are relatively simple, and are based solely upon statements made by detainees. His three-day estimate

OMC does not have enough evidence to prosecute GTMO detainees.

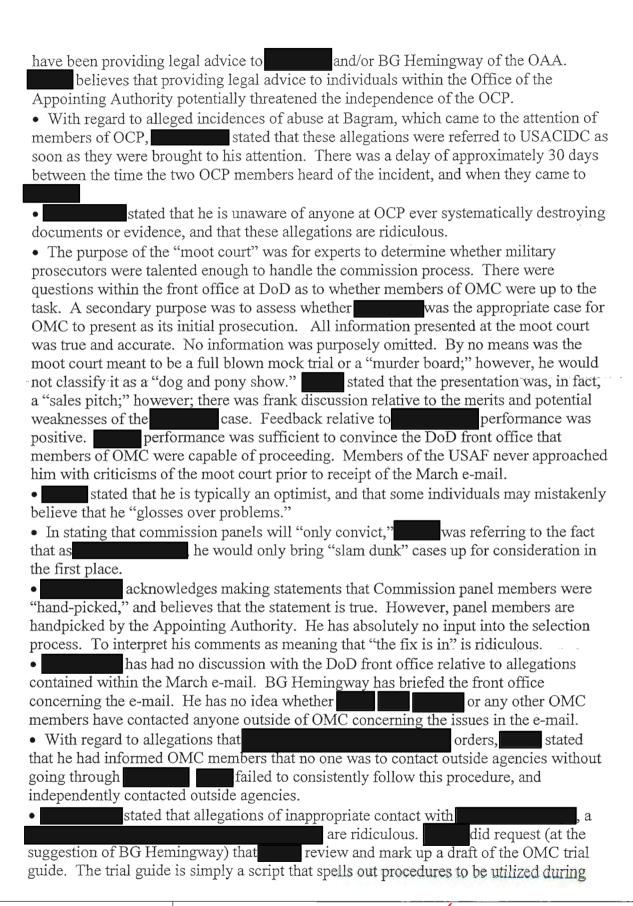
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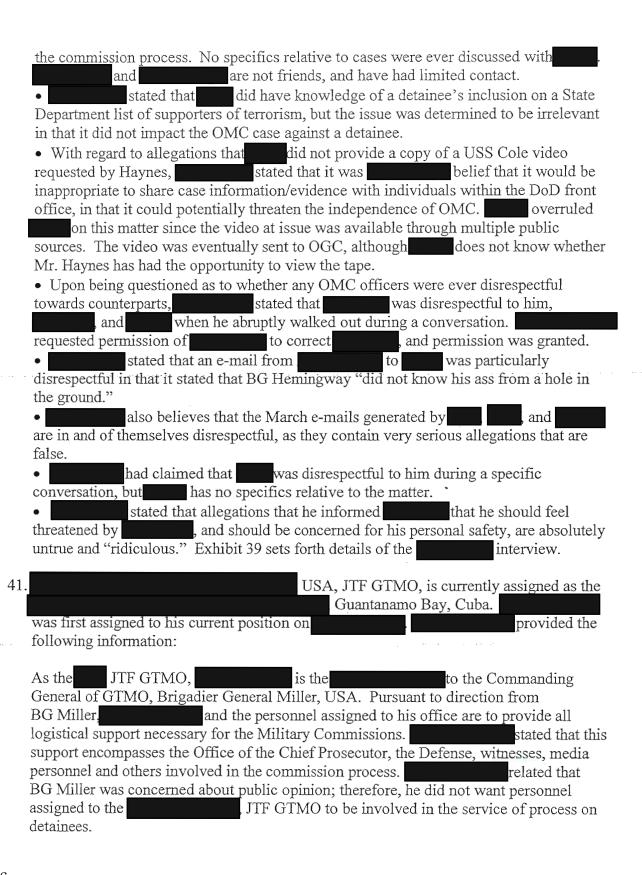
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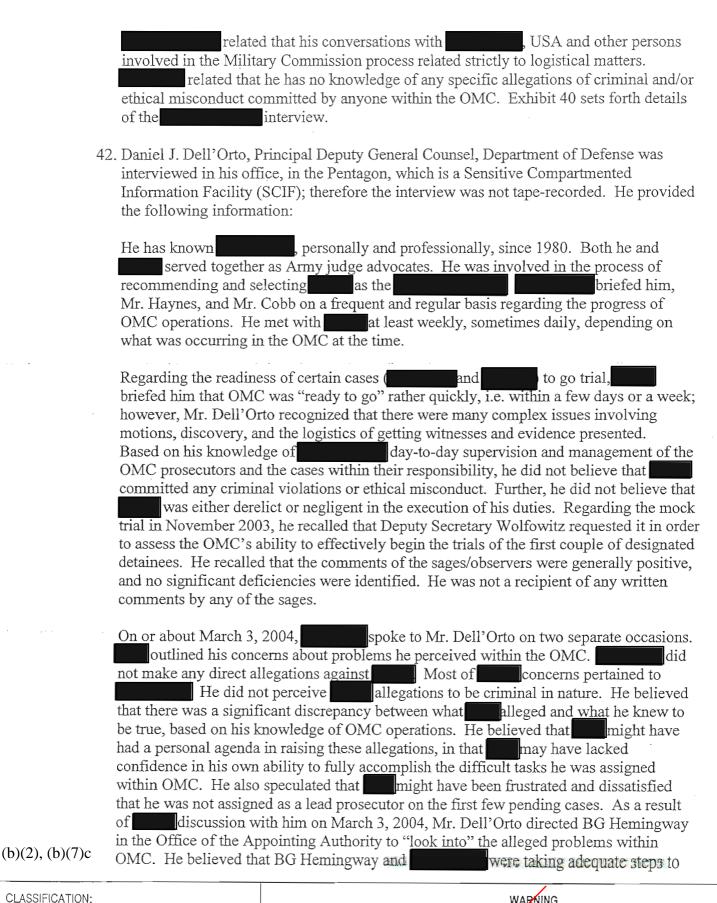
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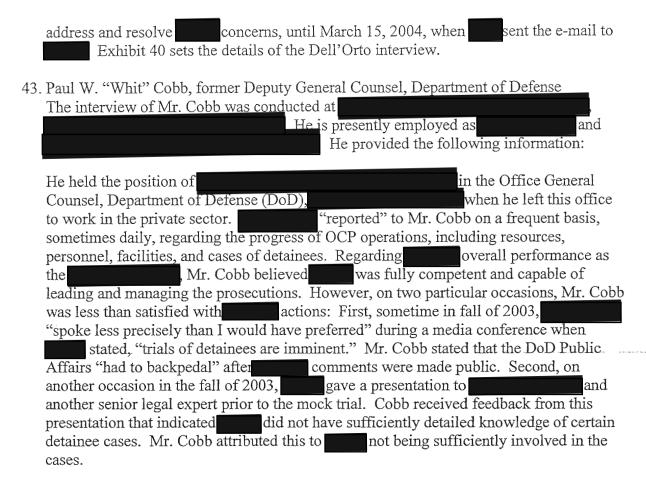


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To his knowledge, Deputy Secretary Wolfowitz requested the mock trial in November 2003. The primary purpose of the mock trial was to "verify" that OMC prosecutors were capable of handling, and adequately prepared to proceed with the designated detainee 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 and the merits of the prosecution's case against the 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 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 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

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) 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 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

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 at (703) 604-

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EX	Ш	BITS	
1	-	DCIS Form 1, Case Initiation, March 29, 2004	
2	-	DCIS Form 1, Interview of March 30, 2004	ļ.
3	-	DCIS Form 1, Interview of April 1, 2004	
4	-	DCIS Form 1, Interview of March 31, 20	04
5	-	DCIS Form 1, Interview of April 2, 2	004
6	-	DCIS Form 1, Interview of April 3, 2004	
7	-	DCIS Form 1, Interview of April 3, 2004	
8	~	DCIS Form 1, Interview of April 3, 2004	
9	-	DCIS Form 1, Interview of March 31, 200	4
10	-	DCIS Form 1, Interview of March 31, 2004	ł
11	-	DCIS Form 1, Interview of April 2, 2004	
12	-	DCIS Form 1, Interview of April 3, 2004	
13	-	DCIS Form 1, Interview of April 2, 2004	
14	-	DCIS Form 1, Interview of April 2, 2004	
15	_	DCIS Form 1, Interview of April 7, 2004	
16	<u>-</u>	DCIS Form 1, Interview of April 9, 2004	
17		DCIS Form 1, Interview of April 10, 200)4
18	~	DCIS Form 1, Interview of BG Hemingway, April 6, 20	04
19	-	DCIS Form 1, Interview of April 8, 2	.004
20	-	DCIS Form 1, Interview of April 7, 2004	1
21	-	DCIS Form 1, Interview of April 6, 2004	
.22	-	DCIS Form 1, Interview of April 9, 2004	
.23	-	DCIS Form 1, Interview of April 8, 2004	
24	-	DCIS Form 1, Interview of April 16, 2004	
25	-	DCIS Form 1, Interview of April 7, 2004	
26		DCIS Form 1, Interview of April 7, 2004	•
27		DCIS Form 1, Interview of April 8, 2004	
28		DCIS Form 1, Interview of April 8, 2004	
29		DCIS Form 1, Interview of April 9, 200	
30	-	DCIS Form 1, Interview of April 12, 20	
31		DCIS Form 1, Interview of April 12, 2004	
32		DCIS Form 1, Interview of April 12, 2004	and the standard of the standard of
33		DCIS Form 1, Interview of April 15, 2004	
34		DCIS Form 1, Interview of 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 April 15, 2004	
38		DCIS Form 1, Interview of April 16, 2004	
39		DCIS Form 1, Interview of April 19, 2004	
40		DCIS Form 1, Interview of April 21, 200	
41		DCIS Form 1, Interview of Mr. Dell'Orto, April 20, 2004	1
42	-	DCIS Form 1, Interview of Mr. Cobb, April 22, 2004	
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