DEPARTMENT OF THE AIR FORCE

PRESENTATION TO THE
COMMITTEE ON ARMED SERVICES
UNITED STATES HOUSE OF REPRESENTATIVES

SUBJECT: MILITARY COMMISSIONS

STATEMENT OF: LIEUTENANT GENERAL JACK L. RIVES
THE JUDGE ADVOCATE GENERAL
UNITED STATES AIR FORCE

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BY THE COMMITTEE ON ARMED SERVICES
UNITED STATES HOUSE OF REPRESENTATIVES

Chairman Skelton, Ranking Member McKeon, members of the Armed Services Committee, good afternoon and thank you for this opportunity to testify today on the subject of military commissions. Before I begin, I would like to emphasize that the views expressed in my testimony are my own and do not represent the views of the Department of Defense or the Administration.

Military commissions have a long history in this country as a mechanism to address possible violations of the law of war. Military commissions were used extensively during and after World War II, and they were again called upon in the aftermath of the September 11, 2001 attacks. After action by the Executive and review by the Supreme Court, the Congress acted in 2006 to pass the Military Commissions Act (MCA), providing the President statutory authority to establish military commissions to try traditional offenses as codified in the MCA. The effort to make military commissions more fair and credible enhances national security by providing effective alternatives to try international terrorists who violate the law of war.

Periodic review of the military commissions legislation and procedures is vital to an effective and fair commission process. As you are aware, the Department of Defense has been participating in a review of military commissions as directed by the President. We have been involved in that undertaking. The review led to the development of procedural changes that did not require revisions to the statute.

As required by the MCA, the Secretary of Defense notified the Congress in May of proposed changes to the Manual for Military Commissions affecting the

procedures used by military commissions. Those amendments will improve the military commissions process. As a result of the changes:

- Statements obtained using interrogation methods that constitute cruel, inhuman and degrading treatment cannot be admitted as evidence at a trial.
- The burden of proof on admissibility of hearsay will shift to the party that offers it. The burden will no longer be on the party that objects to hearsay to disprove its reliability.
- The accused will have greater latitude in selecting defense counsel.
- In situations where the accused does not testify but offers his own prior hearsay statements, the military judge will no longer be required to instruct the members to consider the accused's decision not to be cross-examined on the hearsay statements and that the statements are not sworn. Any such instruction would now be left to the discretion of the military judge.
- Military judges may establish the jurisdiction of their own courts. Under prior practice, jurisdiction for a military commission to hear a case was established by a prior Combatant Status Review Tribunal.

Further review is ongoing within the Administration. Changes to the Military Commissions Act of 2006 have also been advanced by the Senate Armed Services Committee. Some of the recommendations include making the changes listed above statutory. Additional changes are also appropriate; I highlight two for your consideration.

Reforms in the rules for handling classified information would have significant impact. Procedures that follow the Classified Information Procedures

Act (CIPA) would, with appropriate modification, balance the Government's need to protect classified information with the defendant's interests. The substantial body of CIPA case law that has developed over the years would provide valuable guidance to lawyers and the commissions.

Expanding the scope of appellate review to include review of factual matters, as the Service Courts of Criminal Appeals enjoy under Article 66 of the UCMJ, is desirable. Retention of the current Court of Military Commissions Review, comprised in whole or part of military appellate judges experienced in reviewing cases for both factual and legal sufficiency, is logical and efficient.

I encourage you to closely consider these revisions and stand ready to assist as appropriate in your efforts.

Again, thank you for the opportunity to testify and I look forward to answering your questions.