



OFFICE OF THE SECRETARY OF DEFENSE  
1640 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1640

APPOINTING AUTHORITY FOR  
MILITARY COMMISSIONS

JUL - 1 2004

FOR The Judge Advocate General, 2200 Army Pentagon, Washington, DC 20310-2200

SUBJECT: Recall to Active Duty, COL Peter E. Brownback, III, (b)(6)

I request you seek the recall to active duty of COL Peter E. Brownback, III, under the provisions of Section 688, Title 10, United States Code. The period of requested recall is July 1, 2004 through June 30, 2005. COL Brownback retired from active duty on July 1, 1999.

On March 21, 2002, the Secretary of Defense issued Military Commission Order No. 1, authorizing the appointment of commissioned officers as members of Military Commissions, including retired personnel recalled to active duty (Encl 1). On June 25, 2004, I selected COL Brownback to serve as a member of a Military Commission, and designated him as the Presiding Officer.

If recalled, COL Brownback will serve as a Presiding Officer of a Military Commission convened pursuant to the President's Military Order of November 13, 2001, "Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism." As a Presiding Officer, COL Brownback will preside over trials in a unique legal regime that will influence the development of domestic and international law. I considered COL Brownback's entire service record in making this selection, including his extensive judicial, litigation, and operational experience. He is uniquely suited to fulfill this vital role in the Global War on Terrorism.

COL Brownback's consent to this recall is enclosed. My POC is LTC Jon Hall at (b)(2)

(b)(2)

John D. Altenburg, Jr.  
Appointing Authority  
for Military Commissions

Encl  
as





# Department of Defense

## Military Commission Order No. 1

March 21, 2002

**SUBJECT:** Procedures for Trials by Military Commissions of Certain Non-United States Citizens in the War Against Terrorism

- References:**
- (a) United States Constitution, Article II, section 2
  - (b) Military Order of November 13, 2001, "Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism," 66 F.R. 57833 (Nov. 16, 2001) ("President's Military Order")
  - (c) DoD 5200.2-R, "Personnel Security Program," current edition
  - (d) Executive Order 12958, "Classified National Security Information" (April 17, 1995, as amended, or any successor Executive Order)
  - (e) Section 603 of title 10, United States Code
  - (f) DoD Directive 5025.1, "DoD Directives System," current edition

### 1. PURPOSE

This Order implements policy, assigns responsibilities, and prescribes procedures under references (a) and (b) for trials before military commissions of individuals subject to the President's Military Order. These procedures shall be implemented and construed so as to ensure that any such individual receives a full and fair trial before a military commission, as required by the President's Military Order. Unless otherwise directed by the Secretary of Defense, and except for supplemental procedures established pursuant to the President's Military Order or this Order, the procedures prescribed herein and no others shall govern such trials.

### 2. ESTABLISHMENT OF MILITARY COMMISSIONS

In accordance with the President's Military Order, the Secretary of Defense or a designee ("Appointing Authority") may issue orders from time to time appointing one or more military

commissions to try individuals subject to the President's Military Order and appointing any other personnel necessary to facilitate such trials.

### 3. JURISDICTION

#### A. Over Persons

A military commission appointed under this Order ("Commission") shall have jurisdiction over only an individual or individuals ("the Accused") (1) subject to the President's Military Order and (2) alleged to have committed an offense in a charge that has been referred to the Commission by the Appointing Authority.

#### B. Over Offenses

Commissions established hereunder shall have jurisdiction over violations of the laws of war and all other offenses triable by military commission.

#### C. Maintaining Integrity of Commission Proceedings

The Commission may exercise jurisdiction over participants in its proceedings as necessary to preserve the integrity and order of the proceedings.

### 4. COMMISSION PERSONNEL

#### A. Members

##### (1) Appointment

The Appointing Authority shall appoint the members and the alternate member or members of each Commission. The alternate member or members shall attend all sessions of the Commission, but the absence of an alternate member shall not preclude the Commission from conducting proceedings. In case of incapacity, resignation, or removal of any member, an alternate member shall take the place of that member. Any vacancy among the members or alternate members occurring after a trial has begun may be filled by the Appointing Authority, but the substance of all prior proceedings and evidence taken in that case shall be made known to that new member or alternate member before the trial proceeds.

##### (2) Number of Members

Each Commission shall consist of at least three but no more than seven members, the number being determined by the Appointing Authority. For each such Commission, there shall also be one or two alternate members, the number being determined by the Appointing Authority.

**(3) Qualifications**

Each member and alternate member shall be a commissioned officer of the United States armed forces ("Military Officer"), including without limitation reserve personnel on active duty, National Guard personnel on active duty in Federal service, and retired personnel recalled to active duty. The Appointing Authority shall appoint members and alternate members determined to be competent to perform the duties involved. The Appointing Authority may remove members and alternate members for good cause.

**(4) Presiding Officer**

From among the members of each Commission, the Appointing Authority shall designate a Presiding Officer to preside over the proceedings of that Commission. The Presiding Officer shall be a Military Officer who is a judge advocate of any United States armed force.

**(5) Duties of the Presiding Officer**

(a) The Presiding Officer shall admit or exclude evidence at trial in accordance with Section 6(D). The Presiding Officer shall have authority to close proceedings or portions of proceedings in accordance with Section 6(B)(3) and for any other reason necessary for the conduct of a full and fair trial.

(b) The Presiding Officer shall ensure that the discipline, dignity, and decorum of the proceedings are maintained, shall exercise control over the proceedings to ensure proper implementation of the President's Military Order and this Order, and shall have authority to act upon any contempt or breach of Commission rules and procedures. Any attorney authorized to appear before a Commission who is thereafter found not to satisfy the requirements for eligibility or who fails to comply with laws, rules, regulations, or other orders applicable to the Commission proceedings or any other individual who violates such laws, rules, regulations, or orders may be disciplined as the Presiding Officer deems appropriate, including but not limited to revocation of eligibility to appear before that Commission. The Appointing Authority may further revoke that attorney's or any other person's eligibility to appear before any other Commission convened under this Order.

(c) The Presiding Officer shall ensure the expeditious conduct of the trial. In no circumstance shall accommodation of counsel be allowed to delay proceedings unreasonably.

(d) The Presiding Officer shall certify all interlocutory questions, the disposition of which would effect a termination of proceedings with respect to a charge, for decision by the Appointing Authority. The Presiding Officer may certify other interlocutory questions to the Appointing Authority as the Presiding Officer deems appropriate.



OFFICE OF THE SECRETARY OF DEFENSE  
1640 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1640

APPOINTING AUTHORITY FOR  
MILITARY COMMISSIONS

July 16, 2004

MEMORANDUM FOR Whom it May Concern

SUBJECT: Assignment of Colonel Peter E. Brownback III as Presiding Officer for  
Military Commissions

Colonel Peter E. Brownback III has been assigned by AHRC-PLM-P Orders M-07-401542 to W46FAA, U.S. Army Element, Defense Legal Services Agency. COL Brownback's position as the Presiding Officer for the Military Commissions is established under provision of DOD Dir 5105.70.

COL Brownback's duty station/location will be (b)(6) with travel as necessary to perform his duties.

John D. Altenburg, Jr.  
Appointing Authority  
for Military Commissions

cc:  
Col Brownback





DEPARTMENT OF DEFENSE  
 OFFICE OF GENERAL COUNSEL  
 1600 DEFENSE PENTAGON  
 WASHINGTON, DC 20301-1600



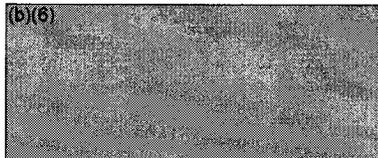
AUG 8 2005

MEMORANDUM FOR DIRECTOR, ADMINISTRATION AND MANAGEMENT  
 ATTN: DIRECTOR FOR ORGANIZATIONAL AND  
 MANAGEMENT PLANING

SUBJECT: Request for Non-Reimbursable Details to Support the Office of Military  
 Commissions

Request the following individual who is temporarily assigned on a detail to the  
 Office of the General Counsel/DLSA as part of the Office of Military Commissions,  
 Presiding Officer, in support of Operations Noble Eagle and Enduring Freedom be  
 extended through 30 June 2006:

Name	SSN	Expected Departure Date	Org Code	Clearance Level Required
COL Brownback, Peter E., USA	(b)(6)	Jun 2006	110000	TS/SCI



Note: Detail # D1673 *js*

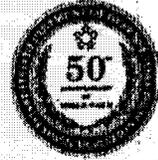
*Carol A. Walker*  
 15 Aug 05

*-effective through 30 Jun 06*





DEPARTMENT OF DEFENSE  
 OFFICE OF GENERAL COUNSEL  
 1600 DEFENSE PENTAGON  
 WASHINGTON, DC 20301-1600



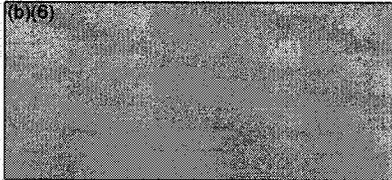
JUL 11 2006

MEMORANDUM FOR DIRECTOR, ADMINISTRATION AND MANAGEMENT  
 ATTN: DIRECTOR FOR ORGANIZATIONAL AND  
 MANAGEMENT PLANING

SUBJECT: Request for Non-Reimbursable Details to Support the Office of Military  
 Commissions

Request the following individual who is temporarily assigned on a detail (detail #D1673) to the Office of the General Counsel/DLSA as part of the Office of Military Commissions, Presiding Officer, in support of Operations Noble Eagle and Enduring Freedom be extended through 30 June 2007:

Name	SSN	Expected Departure Date	Org Code	Clearance Level Required
COL Brownback, Peter E., USA	(b)(6)	Jun 2007	110000 900040	TS/SCI



*Carol S. Walker*  
 27 Jul 06

D1673

effective through <sup>6</sup> June 29, 2007



OFFICE OF THE SECRETARY OF DEFENSE  
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WASHINGTON, DC 20301-1640

APPOINTING AUTHORITY FOR  
MILITARY COMMISSIONS

20 April 2005

MEMORANDUM THRU ARMY G1, ATTN: DMPP

FOR ASSISTANT SECRETARY OF THE ARMY (MANPOWER AND RESERVE  
AFFAIRS), ATTN: DASA (HUMAN RESOURCES)

SUBJECT: Consent to Recall to Active Duty for COL Peter E. Brownback, III, (b)(6)

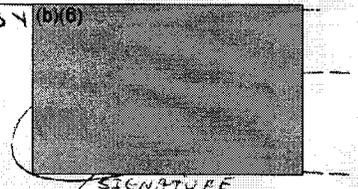
I am aware that MG Thomas J. Romig, The Judge Advocate General, has submitted a request to extend my current recall for the period of 1 July 2005 to 30 June 2006.

I am willing to serve on active duty for the additional period requested.

PETER E. BROWNBACK, III  
COL, JA  
Chief Presiding Officer



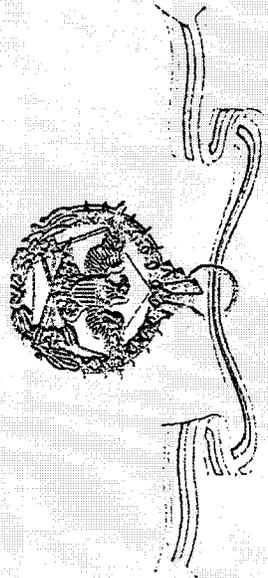
PICKED UP BY (b)(6)



SIGNATURE

7/22/08

DATE



# THE UNITED STATES OF AMERICA

TO ALL WHO SHALL SEE THESE PRESENTS, GREETING:  
THIS IS TO CERTIFY THAT  
THE SECRETARY OF DEFENSE  
HAS AWARDED

## THE DEFENSE SUPERIOR SERVICE MEDAL

TO

COLONEL PETER E. BROWNBACK III, UNITED STATES ARMY

FOR  
EXCEPTIONALLY MERITORIOUS SERVICE  
FOR THE ARMED FORCES OF THE UNITED STATES

GIVEN UNDER MY HAND IN THE CITY OF WASHINGTON  
THIS 9TH DAY OF JULY 2008



*P. Brownback*  
SECRETARY OF DEFENSE

CITATION TO ACCOMPANY THE AWARD OF  
THE DEFENSE SUPERIOR SERVICE MEDAL  
TO  
COLONEL PETER E. BROWNBACK III

Colonel Peter E. Brownback III, United States Army, distinguished himself by exceptionally superior service as Presiding Officer, Chief Presiding Officer, and Military Judge, Office of Military Commissions, Defense Legal Services Agency, Department of Defense, from July 2004 to June 2008. COL Brownback was recalled with less than two weeks notice to serve as the Presiding Officer for trials by military commission. As the sole Presiding Officer of these modern military commissions, COL Brownback established, wrote, and published procedural rules, and presided over all facets of the first arraignments and other hearings held by a military commission in over 50 years. As the Chief Presiding Officer and as a Military Judge after the passage of the Military Commissions Act of 2006, COL Brownback was instrumental in creating the Rules of Court and in providing assistance and training to new military judges. Blessed with superior legal skills, keen knowledge of how to manage a courtroom, mature judgment, and common sense, he considered and helped resolve the most complex legal issues with ease. He made a direct, positive impact towards winning the Global War on Terrorism. COL Brownback's superb intellect, superior judgment, hard work, leadership, and dedication proved invaluable to the Military Commissions Trial Judiciary. The distinctive accomplishments of COL Brownback reflect great credit upon himself, the United States Army, and the Department of Defense.

## Sowder, William, LTC, DoD OGC

**From:** Kohlmann Col Ralph H (b)(2)  
**Sent:** Monday, August 11, 2008 10:13 AM  
**To:** Sowder, William, LTC, DoD OGC  
**Subject:** FW: Extension of Col B's Recall Orders  
**Signed By:** (b)(2)

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

**From:** Henley, Stephen R COL OTJAG [mailto:(b)(2)]  
**Sent:** Tuesday, December 18, 2007 13:07  
**To:** Kohlmann Col Ralph H  
**Subject:** RE: Extension of Col B's Recall Orders

Thnx. I'll raise with BG Tate and Dave Diner.

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

**From:** Kohlmann Col Ralph H [mailto:(b)(2)]  
**Sent:** Tuesday, December 18, 2007 1:06 PM  
**To:** Henley, Stephen R COL OTJAG  
**Subject:** Extension of Col B's Recall Orders

S,

1. Per our conversation, here is the litigation schedule ordered by Col B in US v Khadr. (See attachment and email below) It orders a schedule for litigating motions and getting through to voir dire of the members and assembly of the court on 5 May 2007. If that were accomplished, we would expect the trial on the merits to commence shortly thereafter. It is difficult to project how long the trial will run.

2. That being said, it is very likely that the schedule will be modified in response to expected requests for continuance from one or both sides. I anticipate a rather large number of motions. I also expect that the exchange of motions/responses/relies/etc will lead to accompanying requests for time extensions and/or a court ordered modification to the trial schedule in order to facilitate adequate and orderly resolution of the issues.

3. Col B has been working on these MCs since day one. Based on his very considerable abilities and experience, he is especially well suited to address what will be complex, first time litigation concerning the anticipated issues. I am hopeful that it will be possible to, at a minimum, extend his retired recall status for period long enough to allow him to see Khadr through to its conclusion. In the event that the rate of case referrals picks up to encompass the rumored 40-80 additional cases, consideration should also be given to maintaining Col B as an asset for service on other cases as well.

4. In the unhappy event that extension of Col B's orders is not possible, I would appreciate knowing that sooner rather than later. Rule for Military Commissions 505 provides that I can replace a judge for any reason prior to assembly. After assembly it can only be done for good cause shown. It may well be that the expiration of Col B's recall orders amount to good cause. That being said, it is fair to say that a directed change of the MJ at any time may be problematic. Accordingly, if I really am faced w/ a drop dead date of 30 June, I would like to know that ASAP so I can determine the most appropriate time to make a change. I again stress that I strongly believe that the MC process would be best served by doing what needs to be done to avoid having to make a MJ change in this case.

5. Pls advise if you need any further info from me re this matter.

V/R,

Ralph H. Kohlmann  
Colonel, U.S. Marine Corps  
Chief Judge, Military Commissions Trial Judiciary (b)(2) DSN  
(b)(2) FAX (b)(2)

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From: Chappell, Danny, LTC, DoD OGC  
Sent: Wednesday, November 28, 2007 13:05  
To: Kuebler, William, LCDR, DoD OGC; Snyder, Rebecca, Ms, DoD OGC; Berrigan, Michael, Mr, DoD OGC; Murphy, John, Mr, DoD OGC; Groharing, Jeff, Maj, DoD OGC; Petty, Keith, CPT, DoD OGC

Cc: (b)(6)  
(b)(6) Pete  
Brownback'; (b)(6)  
(b)(6)

Subject: FW: Trial Schedule - United States v. Khadr

COL Brownback has directed that I forward the email below and the attachment to counsel and other interested persons.

v/r,

LTC Mike Chappell, USAR  
Senior Attorney Advisor

Military Commissions Trial Judiciary  
Department of Defense

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From: Pete Brownback [mailto:(b)(6)]  
Sent: Wednesday, November 28, 2007 12:49  
To: Chappell, Danny, LTC, DoD OGC  
Subject: Trial Schedule - United States v. Khadr

LTC Chappell,

Please forward the email below and the attachment to the counsel in the case of United States v. Khadr. Please distribute it to other interested persons.

COL Brownback

Counsel in the case of US v. Khadr,

1. Attached is the current trial schedule in this case. The trial schedule incorporates the commission's responses to matters raised by the defense and the prosecution in their emails on the draft trial schedule.
2. The commission urges the parties to pay particular attention to Note 2 of paragraph 1a. If a motion, response, or reply is completed prior to the NLT time, counsel should send it to the commission and opposing counsel. Holding such matters until the last moment is not good practice.

Peter E. Brownback III  
COL, JA, USA  
Military Judge

**Sowder, William, LTC, DoD OGC**

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**From:** Kohlmann Col Ralph H (b)(2)  
**Sent:** Monday, August 11, 2008 10:16 AM  
**To:** Sowder, William, LTC, DoD OGC  
**Subject:** FW: Brownback Extension  
**Signed By:** (b)(2)

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

**From:** Henley, Stephen R COL OTJAG [mailto:(b)(2)]  
**Sent:** Tuesday, February 19, 2008 16:24  
**To:** Kohlmann Col Ralph H  
**Subject:** RE: Brownback Extension

Ralph. I think memo is fine. But suggest adding para re other services - ie current #judges and expected departure dates/replacements and experience level/competence, etc. Helps magnify PB's value to MCTJ.

I called Dave Diner to discuss how to proceed and staffing of request. He was not in. I'll be honest. I think will be tough sell. Best approach may be to limit PB extension request to earlier of either Khadr completion or date certain, like 30 September, and not raise possible detail to other commissions. TJAG may grudgingly accede if he knows there is a specific termination date before the beginning of the new FY.

So, let's hold off on final memo until I have a chance to talk to Dave.

v/r,  
Steve

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

**From:** Kohlmann Col Ralph H [mailto:(b)(2)]  
**Sent:** Tuesday, February 19, 2008 12:38 PM  
**To:** Henley, Stephen R COL OTJAG; Henley, Stephen R COL OTJAG  
**Cc:** Chappell, Danny, LTC, DoD OGC  
**Subject:** Brownback Extension

S,

1. Per our discussion, here is a draft of my request.
2. Thoughts?
3. Shall I send it in the body of an email to Dave Diner? Or do you recommend reformatting to a memo to be sent as an attachment? Do you suggest it go via you?
4. It is no trouble for to package/send it in any manner you deem appropriate.

5. Ideally, PB would be extended w/ blessing by team Army that I could assign him to other cases as well if the tempo picks up as predicted. If that is at all possible, pls let me know. I did not go so far as to ask for the that idea situation in this memo. My primary focus right now is to achieve a position where PB can see Khadr through to the end.

6. Thanks.

V/R,  
RHK

<<...>>

1. Colonel Peter Brownback is currently serving as the Military Judge in the Military Commissions case of US v. Khadr. The court ordered litigation schedule (28 November 2007) for that case provides for evidentiary motions to be heard on 1 April 2008, and voir dire and assembly of the court on 5 May 2008. If this schedule remains intact, trial on the merits and sentencing proceedings, if necessary could reasonably be expected to run through at least 5 June 2008. After the trial is complete and the transcript of all proceedings is completed, the Military Judge reviews the trial transcript for errors and corrections. Completion of this review process will reasonably take a number of additional weeks. It is also possible that the schedule might be extended due to some circumstance arising during the motions practice or trial. For example, on 15 February 2008 the defense submitted a request to delay the submission of evidentiary motions. If good cause is shown, the motions hearing would necessarily be set back - causing a ripple effect in the current trial schedule.

2. Rule for Military Commission 505 provides that before assembly, the Military Judge may be changed by the Chief Trial Judge without cause shown on the record. After assembly, the Military Judge may be changed by the Chief Trial Judge only when as a result of disqualification or for good cause shown.

3. Colonel Brownback's current recall orders expire on 29 June 2008. It has been my intent to leave Colonel Brownback in place as the detailed Military Judge in US v Khadr for as long a possible, and to make a change at an appropriate time only if it became clear that the trial process would extend beyond 29 June 2008. However, I note that this would conflict with his ability to fulfill the necessary administrative requirements to enter on the retired rolls again.

4. A number of events have now taken place that affect my range of options with regard to any change that might be made with regard to the Military Judge in US v Khadr. On 30 Jan 08 charges were referred for trial in the case of US v Jawad. Additionally, on 20 Dec 07 charges were sworn in the case of US v al Darbi; on 8 Feb 08 charges were sworn in the case of US v al Qosi; on 8 Feb 08 charges were sworn in the case of US v al Bahlul; and, on 11 Feb 08 charges were sworn in the High Value Detainee case of US v Mohammed, Bin 'Attash, Binalshibh, Aziz Ali, al Hawsawi, and al Kahtani. Further, OMC has informed our Trial Judiciary Staff to be prepared for 5-10 new case referrals every month now that the new Courtroom II is finished at GTMO. Any and all of these cases with sworn charges pending may reasonably be expected to be referred for trial in the very near future. Accordingly, it now appears that the several judges that were well positioned to take over for Colonel Brownback if his recall orders expired in June 2008 will probably be presiding over military commission cases of their own at that time. All of these other judges also have existing case loads connected with their regular duties as Military Judges in their respective Services

5. While it is true that some other judge could ultimately be identified if necessary, or that some other judge could take on US v Khadr, in addition to their own commissions case if necessary, it appears to me that the increasing case load in GTMO augers in favor of revisiting any decision that might have been made not to extend Colonel Brownback's recall status. I understand the concern with regard to continuing his recall status in an indefinite manner, or during a period that the commissions' trial process falls dormant. In light of recent events however, I request new consideration be given to extending Colonel Brownback's recall status in a manner that he will be able to be able to preside over US v Khadr through the conclusion of the trial process. Colonel Brownback is the only Presiding Officer/Military Judge who has been with the commissions since the first commission system was established and he possesses institutional memory and knowledge that cannot be duplicated. His experience in this regard allows him to provide invaluable assistance to all other Military Judges. Both Colonel Brownback and I understand that any further extension would likely be curtailed following completion of the trial process or should some event cause an extended delay in the trial proceedings (e.g. intervening Supreme Court action).

Statement - Peter E. Brownback III, COL, JA, USA

1. I am currently recalled to active duty pursuant to
  - a. AHRC-PLM-P Orders M-07-401542 dated 14 July 2004 (recall for the period 13 July 2007 for NTE 365 days), as amended by
  - b. AHRC-PLM-P Orders M-07-401542A01 dated 23 Nov 2004, as amended by
  - c. AHRC-PLM-P Orders M-07-401542A02 dated 13 Jul 2005 (recall extended until 30 June 2006), as amended by
  - d. AHRC-PLM-P Orders M-07-401542A03 dated 13 Jun 2006 (recall extended until 30 June 2007), as amended by
  - e. AHRC-PLM-P Orders M-07-401542A04 dated 28 Jun 2007 (recall extended until 29 June 2008).
2. I was detailed as military judge in the case of United States v. Khadr by the Chief Trial Judge of the Military Commissions, COL Kohlmann, on 24 April 2007.
3. In December 2007, COL Kohlmann and I discussed the progress in Khadr. We both wanted to insure that the case would be successfully concluded. Recognizing the possibility that my tour might not be extended, we tried to decide how to handle the progress of the case. We both agreed that if certain timelines were not met, it would be best to have another military judge detailed to the case. We further agreed that an appropriate time to detail another military judge would be after all of the law motions in the case were resolved.
4. On 20 February 2008, COL Henley, Chief Trial Judge of the US Army, told me that orders extending me beyond 29 June 2008 would not be issued. I was not told the reason or reasoning behind that decision. I still do not know nor have I have told the reason or reasoning behind that decision. I have never spoken to the current chief of the Personnel, Plans, and Training Office and I have not spoken to The Judge Advocate General since sometime in 2005 - when he was a brigadier general.
5. I note that no rulings in any law or discovery motion were distributed before I was told that I would not be extended.
6. After the 11 April 2008 trial session, I realized that I could not schedule a trial date which would allow me to conclude the case before 29 June 2008. I reported that determination to COL Kohlmann. Based on the persons designated to the pool of judges, he told me that he was planning to detail COL Parrish as military judge.

Peter E. Brownback III  
Colonel, United States Army

**Sowder, William, LTC, DoD OGC**

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**From:** Sowder, William, LTC, DoD OGC  
**Sent:** Monday, June 02, 2008 10:19 AM  
**To:** Crawford, Gail, MAJ, DoD OGC  
**Subject:** RE: Comment Re MJ Change in US v Khadr

Your blackberry is probably too small to pick up all the distro. You are on there and it is open.

v/r,

LTC William C. Sowder, USAR  
Attorney Advisor  
Military Commissions Trial Judiciary  
Department of Defense

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

**From:** Crawford, Gail, MAJ, DoD OGC  
**Sent:** Monday, June 02, 2008 10:14 AM  
**To:** Sowder, William, LTC, DoD OGC  
**Subject:** Re: Comment Re MJ Change in US v Khadr

Sir the cc list was truncated so I didn't see my name. Was this an open copy or blind?

**CAUTION:** Information contained in this message may be protected by the attorney/client, attorney work product, deliberative process or other privileges. Do not disseminate further without approval from the Office of the DoD General Counsel.

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Sent from my BlackBerry Wireless Handheld

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

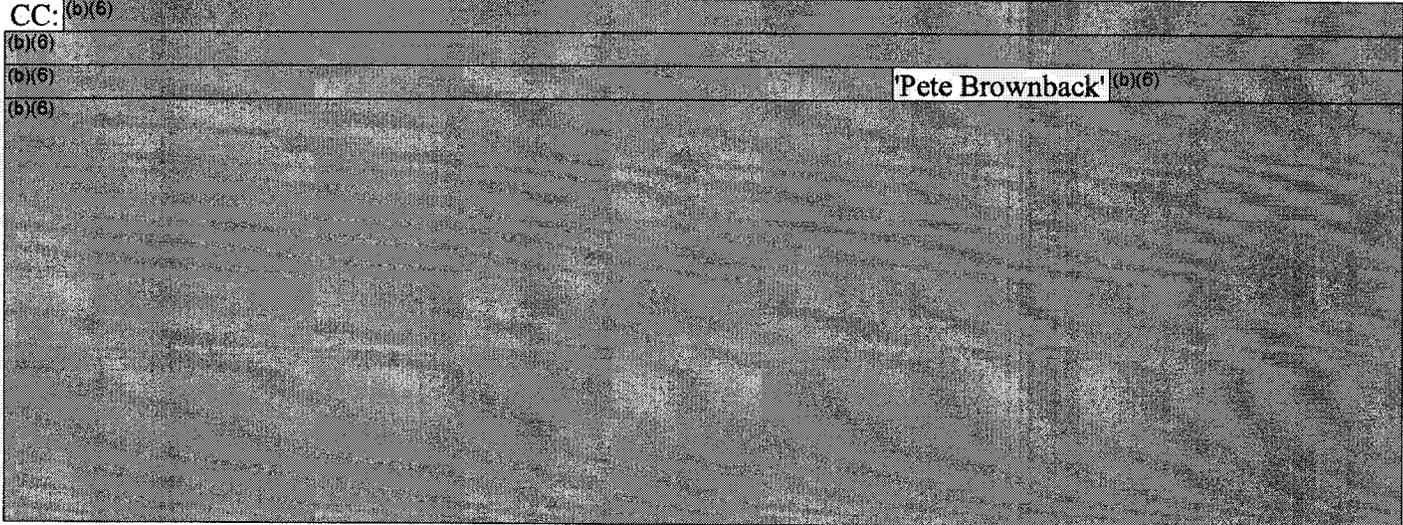
**From:** Sowder, William, LTC, DoD OGC  
**To:** Petty, Keith, CPT, DoD OGC; Snyder, Rebecca, Ms, DoD OGC; Groharing, Jeff, Maj, DoD OGC; Kuebler, William, LCDR, DoD OGC; (b)(2),(b)(6); Murphy, John, Mr, DoD OGC  
**CC:** (b)(6)

(b)(6)

(b)(6)

'Pete Brownback' (b)(6)

(b)(6)



(b)(6)

Sent: Mon Jun 02 09:31:07 2008

Subject: Comment Re MJ Change in US v Khadr

Col Kohlmann has directed that I forward the below email to appropriate persons.

v/r,

LTC William C. Sowder, USAR  
Attorney Advisor  
Military Commissions Trial Judiciary  
Department of Defense

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

From: Kohlmann Col Ralph H [mailto:(b)(2)]  
Sent: Monday, June 02, 2008 9:03 AM  
To: Sowder, William, LTC, DoD OGC  
Subject: Comment Re MJ Change in US v Khadr

LTC Sowder: Please forward this message to the appropriate persons.

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On 29 May 2008, I detailed COL Patrick Parrish as the military judge in the case of United States v. Khadr. COL Peter E. Brownback III had been detailed as the military judge prior to that action.

Rule for Military Commission 505 reads as follows: "Before the military commission is assembled, the military judge may be changed by the Chief Trial Judge, without cause shown on the record." This provision of the Manual for Military Commissions is a virtual mirror of its counterpart in the Manual for Courts Marital. As in a court-martial involving a trial before members, the point of "assembly" in a military commission occurs following the seating of the members. The case of U.S. v Khadr is still in the pre-assembly stage of the proceedings. Since a change of military judge at the pre-assembly stage does not require a showing of good cause on the record, no explanatory comment accompanied the notice of the change issued with regard to U.S. v Khadr on 29 May 2008. It is worthy of note that the simple language used in the U.S. v Khadr notice of change was the same as that used in the several change notices issued in other Military Commissions cases.

As a general rule, it is inappropriate for individual judges or the Military Commissions Trial Judiciary to join in the public debate concerning the Military Commissions. In that the change of military judge in U.S. v Khadr has generated discussion about the independence of the judiciary, however, I have determined that a short comment is in order.

Colonel Brownback retired from active duty after 30 years of commissioned service in 1999. He was initially recalled to active duty for a period of one year in conjunction with the Military Commissions in 2004. Colonel Brownback's recall orders were then extended by the Army for an additional year on three occasions. His current recall orders will expire on 29 June 2008.

In late 2007 I was aware that COL Brownback's recall orders expired on 29 June 2008. In order to facilitate Colonel Brownback's ability to preside over the case of United States v. Khadr through its conclusion, I requested that an additional extension to his orders be issued. Colonel Brownback was aware of my request and stated that he was willing to continue in the service of his country for as long as deemed appropriate by the cognizant authorities. The Army ultimately decided against issuing an additional extension to COL Brownback's recall orders.

The decision not to extend Colonel Brownback's recall orders for a fifth year was made by the Army in February 2008. It is my understanding that this decision was based on a number of manpower management considerations unrelated to the Military Commissions process.

In light of that decision, it became apparent to Colonel Brownback and myself that the litigation in U.S. v Khadr might extend beyond Colonel Brownback's period of recalled active service. Accordingly, we had a full discussion regarding the most appropriate time for him to hand the case off to another judge if and when it became clear that the matter would not be resolved before 29 June 2008. We ultimately determined that the best time to make the change would be after completion of what are referred to as the "law motions," but before litigation of what are referred to as the "evidentiary motions." That point was reached in late May 2008 after Colonel Brownback had issued his ruling on the last of the pending law motions, and the trial start date had been continued such that the trial would not be completed before 29 June 2008.

The change of military judge in US v. Khadr was made by me solely because COL Brownback would not be on active duty to try the case to completion. My detailing of another judge was completely unrelated to any actions that Colonel Brownback has taken in this or any other case. Any suggestion that my detailing of another military judge was driven by or prompted by any decisions or rulings made by Colonel Brownback is incorrect. Any suggestion that COL Brownback asked to return to retired status before the case of US v. Khadr was completed is also incorrect.

V/R,

Ralph H. Kohlmann  
Colonel, U.S. Marine Corps  
Chief Judge, MCTJ

**Henley, Stephen R COL OTJAG**

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**From:** Kohlmann Col Ralph H (b)(2)  
**Sent:** Tuesday, December 18, 2007 1:06 PM  
**To:** Henley, Stephen R COL OTJAG  
**Subject:** Extension of Col B's Recall Orders  
**Signed By:** (b)(2)

**Attachments:** Trial Schedule - US v Khadr - 28 Nov 07.pdf



Trial Schedule - US  
v Khadr -...

S,

1. Per our conversation, here is the litigation schedule ordered by Col B in US v Khadr. (See attachment and email below) It orders a schedule for litigating motions and getting through to voir dire of the members and assembly of the court on 5 May 2007. If that were accomplished, we would expect the trial on the merits to commence shortly thereafter. It is difficult to project how long the trial will run.
2. That being said, it is very likely that the schedule will be modified in response to expected requests for continuance from one or both sides. I anticipate a rather large number of motions. I also expect that the exchange of motions/responses/relies/etc will lead to accompanying requests for time extensions and/or a court ordered modification to the trial schedule in order to facilitate adequate and orderly resolution of the issues.
3. Col B has been working on these MCs since day one. Based on his very considerable abilities and experience, he is especially well suited to address what will be complex, first time litigation concerning the anticipated issues. I am hopeful that it will be possible to, at a minimum, extend his retired recall status for period long enough to allow him to see Khadr through to its conclusion. In the event that the rate of case referrals picks up to encompass the rumored 40-80 additional cases, consideration should also be given to maintaining Col B as an asset for service on other cases as well.
4. In the unhappy event that extension of Col B's orders is not possible, I would appreciate knowing that sooner rather than later. Rule for Military Commissions 505 provides that I can replace a judge for any reason prior to assembly. After assembly it can only be done for good cause shown. It may well be that the expiration of Col B's recall orders amount to good cause. That being said, it is fair to say that a directed change of the MJ at any time may be problematic. Accordingly, if I really am faced w/ a drop dead date of 30 June, I would like to know that ASAP so I can determine the most appropriate time to make a change. I again stress that I strongly believe that the MC process would be best served by doing what needs to be done to avoid having to make a MJ change in this case.
5. Pls advise if you need any further info from me re this matter.

V/R,

Ralph H. Kohlmann  
Colonel, U.S. Marine Corps  
Chief Judge, Military Commissions Trial Judiciary (b)(2) DSN  
(b)(2) FAX (b)(2)

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From: Chappell, Danny, LTC, DoD OGC  
Sent: Wednesday, November 28, 2007 13:05  
To: Kuebler, William, LCDR, DoD OGC; Snyder, Rebecca, Ms, DoD OGC; Berrigan, Michael, Mr, DoD OGC; Murphy, John, Mr, DoD OGC; Groharing, Jeff, Maj, DoD OGC; Petty, Keith, CPT, DoD OGC

Cc: (b)(6)  
(b)(6)

Subject: FW: Trial Schedule - United States v. Khadr

COL Brownback has directed that I forward the email below and the attachment to counsel and other interested persons.

v/r,

LTC Mike Chappell, USAR  
Senior Attorney Advisor  
Military Commissions Trial Judiciary  
Department of Defense

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From: Pete Brownback [mailto:(b)(6)]  
Sent: Wednesday, November 28, 2007 12:49  
To: Chappell, Danny, LTC, DoD OGC  
Subject: Trial Schedule - United States v. Khadr

LTC Chappell,

Please forward the email below and the attachment to the counsel in the case of United States v. Khadr. Please distribute it to other interested persons.

COL Brownback

Counsel in the case of US v. Khadr,

1. Attached is the current trial schedule in this case. The trial schedule incorporates the commission's responses to matters raised by the defense and the prosecution in their emails on the draft trial schedule.

2. The commission urges the parties to pay particular attention to Note 2 of paragraph 1a. If a motion, response, or reply is completed prior to the NLT time, counsel should send it to the commission and opposing counsel. Holding such matters until the last moment is not good practice.

Major E. Bronck 111  
Cdr. J. M. 111  
Military Judge

**UNITED STATES  
OF  
AMERICA**

v

**OMAR AHMED KHADR**  
a/k/a "Akhbar Farhad"  
a/k/a "Akhbar Farnad"  
a/k/a "Ahmed Muhammed Khahi"

**Schedule for Trial**

**28 November 2007**

1. The following trial schedule is ordered.

a. Law Motions:

Defense law motions are due as detailed below. Prosecution shall give notice of any law motions NLT 1630 hours, 7 December 2007 - due dates for such motions will be established upon receipt of notice of motions.

1. 7 December 2007 - 7 law motions.
2. 11 January 2008 - 7 law motions.
3. 18 January 2008 - All remaining law motions.

*Note 1: Motions will have as their underlying legal premise no more than one legal basis. If there is more than one legal basis, then there should be more than one motion. Law motions include motions relative to sentencing.*

*Note 2: Motions, response, and reply due dates are a No Later Than date. Counsel for both sides are advised that any motion, response, or reply which is ready for submission prior to the due date should be submitted when completed. The efficient and proper process of motion practice will NOT be enhanced by delivering multiple motions, responses, or replies to the Commission or opposing party at the last possible moment.*

*Note 3: The due dates set in this order apply to those motions about which counsel should currently be aware -- changes in the law or in factual circumstances may require further motions.*

b. 4-8 February 2008: Hearing in Guantanamo re law motions.

*Note: The Commission is blocking off the entire week of 4-8 February to hear law motions. The exact date within that block time will be established following receipt of motions and other information.*



GENERAL COUNSEL

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE  
1600 DEFENSE PENTAGON  
WASHINGTON, D. C. 20301-1600

FEB 07 2007

MEMORANDUM FOR THE SECRETARIES OF THE MILITARY DEPARTMENTS

SUBJECT: Nominations for Military Judges for Trials by Military Commission

The Military Commissions Act of 2006 ("MCA") authorizes trial by military commission for alien unlawful enemy combatants who violate the law of war and commit other offenses triable by military commissions. The MCA requires that military judges be detailed to each military commission. The military judges shall preside over the military commissions to which they have been detailed. Rule for Military Commissions ("RMC") 503(b) requires the Judge Advocate General of each Military Department to nominate individuals to serve as military judges for these military commissions.

To qualify for duty as a military judge for a military commission, the military judge must be "a commissioned officer of the armed forces, serving on active duty who is a member of the bar of a Federal court, or a member of the bar of the highest court of a State or the District of Columbia and who is certified to be qualified for duty under 10 U.S.C. § 826 as a military judge in general courts-martial by the Judge Advocate General of the armed force of which such military judge is a member." See RMC 502(c) and 10 U.S.C. § 948j (b). Furthermore, each nominee must have at least two years of experience as a military judge while certified to be qualified for duty as a military judge in a general court-martial. See RCM 503(b)(1). If an officer who is not currently on active duty is nominated to serve as a military judge for the military commissions, that individual shall be ordered to active duty for this purpose in accordance with applicable service regulations.

The evidence presented in the military commissions may be classified at the TOP SECRET/ Sensitive Compartmented Information (TS/SCI) level. Nominees for military judges must possess at least a TS clearance. It is preferred that nominees have a TS/SCI clearance or TS with SCI eligibility clearance.

When not performing duties with the military commissions, a military judge may perform other duties as assigned to him by or with the approval of the Judge Advocate General or his designee. See 10 U.S.C. § 948j (e) and RMC 502(c)(3). The military commission judges must be available for extended periods of temporary duty for trials at the U.S. Naval Station, Guantanamo Bay, Cuba.

I request that each Military Department nominate at least three military judges by submitting their names by February 16, 2007. You may nominate more than three judges



702 11908

if you have qualified officers available. The Convening Authority will select one of these individuals (in the grade of O-6) to serve as the Chief Military Judge. The Chief Judge will be responsible for detailing individuals to serve as military judges at the military commissions.

I further request that you submit each nominee's "ORB," "SURF," "SRB" (or its equivalent); documentation of the nominee's Article 26(b) and (c), UCMJ certification as a military judge or a statement from the nominee's supervising Chief Military Judge indicating the date of certification; and a military biography.

My point of contact is Colonel Wendy Kelly, the Executive Officer to the Convening Authority for Military Commissions. Your response to this request should be submitted directly to her. She can be contacted at (703) 699-2758.



William J. Haynes II

cc:

The General Counsel of the Department of the Army  
The General Counsel of the Department of the Navy  
The General Counsel of the Department of the Air Force  
Counsel for the Commandant of the Marine Corps  
The Judge Advocate General of the Army  
The Judge Advocate General of the Navy  
The Judge Advocate General of the Air Force  
The Staff Judge Advocate to the Commandant of the Marine Corps



OFFICE OF THE SECRETARY OF DEFENSE  
OFFICE OF MILITARY COMMISSIONS  
1600 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1600

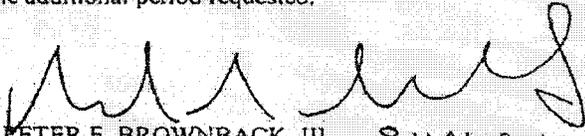
OMCTJ

MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY (MANPOWER AND  
RESERVE AFFAIRS)

SUBJECT: Consent to Recall to Active Duty for COL Peter E. Brownback, III (b)(6)

I am aware that MG Scott C. Black, The Judge Advocate General, has submitted a request to extend my current recall for the period of 1 July 2007 to 30 June 2008.

I am willing to serve on active duty for the additional period requested.

  
PETER E. BROWNBACK, III 8 MAY 2007  
COL, JA  
Military Judge, Military  
Commissions



OFFICE OF THE SECRETARY OF DEFENSE  
OFFICE OF MILITARY COMMISSIONS  
1600 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1600

MEMORANDUM THRU ARMY GI, ATTN: DMPP

FOR ASSISTANT SECRETARY OF THE ARMY (MANPOWER AND RESERVE  
AFFAIRS), ATTN: DASA (HUMAN RESOURCES)

SUBJECT: Consent to Recall to Active Duty for COL Peter E. Brownback, III, (b)(6)

I am aware that MG Scott Black, The Judge Advocate General, has submitted a request to extend my current recall for the period of 1 July 2006 to 30 June 2007.

I am willing to serve on active duty for the additional period requested.

  
PETER E. BROWNBACK, III  
COL, JA  
Chief Presiding Officer  
3 APRIL 2006