



March 11, 2010

Colonel William Lietzau  
Deputy Assistant Secretary for Detainee Affairs  
United States Department of Defense  
1600 Defense Pentagon  
Washington, DC 20301

Re: *Manual for Military Commissions*

Dear Colonel Lietzau,

The National Institute of Military Justice (“NIMJ”) is writing to request that the United States Department of Defense (“DoD”) opens the process of creating the revised Manual for Military Commissions to public participation. NIMJ understands the Manual will be finalized soon. Unfortunately, the process lacked transparency by failing to involve the public and other interested stakeholders in the formation of the rules. The DoD should uphold President Obama’s promise of openness in government by changing the military commission rule making process.

As you know, changes to the Manual for Courts-Martial (“MCM”) are subject to public announcement and comment. Per DoD Directive 5500.17 (May 3, 2003), it is DoD policy “to encourage public participation in the review” of the MCM. Proposed changes are published in the Federal Register, and the public has 60 days to provide written comment. A public meeting is held within those 60 days. Agencies across the government rely on similar notice and comment rules before promulgating new regulations.

Public notice and comment rules exist because public participation and openness in government are cornerstones of our democracy. Allowing public input also adds legitimacy to the regulations, while avoiding potential pitfalls before the proposed rules take effect. Rule making for military commissions, like courts-martial, should be open for the same reasons. The considerable public attention brought to bear on military commissions provides further justification for such reforms.

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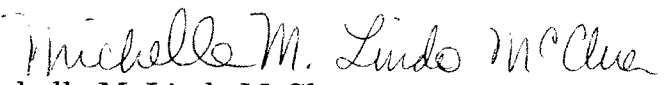
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The military commissions, like courts-martial, are now enshrined in the American legal system. Commissions will likely perform a major role in the nation's legal apparatus for many years to come. Any standing and regularized system of justice in an open democracy requires an appropriate rule making process. At a minimum, NIMJ advises allowing for members of the military commission defense bar, the military law community, and other experts in the field an opportunity to participate in the preparation of the Manual. Ideally, the system used for the MCM should be employed, tasking a standing committee with recommending and considering changes to the Manual. This Committee, consisting of appropriate offices within the DoD, should invite public comment before proposing changes to the Secretary of Defense.

NIMJ welcomes an opportunity to discuss this issue at greater length. You may contact us at 202-274-4322 or at [mmcluer@wcl.american.edu](mailto:mmcluer@wcl.american.edu).

Very Respectfully,

  
Michelle M. Lindo McCluer  
Director  
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CC: Jeh C. Johnson