

Fact Sheet
Department of Defense Order on Military Commissions
3/21/02

A military commission is a war-time, military tribunal traditionally used to try violations of the laws of war. Under the President's Military Order of November 13, 2001, those tried by military commission may include:

- Members of al Qaeda
- People involved in acts of international terrorism against the United States
- People who knowingly harbored such terrorists

Commission Membership and Selection

- Commissions will consist of at least 3 but no more than 7 members, with one or two alternates.
- The Secretary of Defense may appoint members and other commission personnel, or select an Appointing Authority to choose commission personnel.
- Commission members are officers in the United States Armed Forces, including reserve personnel, National Guard members, and retired personnel recalled to active duty.
- A Presiding Officer will be chosen from among the commission members to preside over commission proceedings. The Presiding Officer will be a judge advocate of any branch of the armed forces.
 - ✓ The Presiding Officer has the authority to admit or exclude evidence.
 - ✓ The Presiding Officer also has the authority to close proceedings to protect classified information or to protect the safety of defendants, witnesses, and commission members.

A Full and Fair Trial

- Military defense counsel will be provided for the accused. In addition, the accused may choose their own counsel: another military officer who is a judge advocate of the U.S. Armed Forces or a civilian attorney. Civilian attorneys may be pre-qualified as members of a pool of available attorneys for the defense.
- The defendant and counsel will be able to see copies of the charges in their native language in advance of the trial.
- The accused is presumed innocent until proven guilty.
- The accused may be found guilty only when commission members are convinced of guilt beyond a reasonable doubt.
- The accused may refuse to testify during trial.
- The accused will be able to obtain witnesses and documents to use in his defense.
- The accused may not be tried twice before a military commission for the same offense.
- The accused may enter into a plea agreement.

Trial Format

- Trial proceedings will be open unless otherwise determined by the Presiding Officer. The Presiding Officer may also allow attendance by the public and press. Photography, video and audio recording and broadcasting will be prohibited.
- A trial may be closed to protect:
 - ✓ Classified or sensitive information
 - ✓ The physical safety of participants
 - ✓ Intelligence or law enforcement sources, methods and activities
 - ✓ National security interests
- Commissions will be impartial.

- Evidence, including previous trial testimony and written statements, will be admissible if it would have probative value to a reasonable person.
- Witnesses will testify under oath, and will be subject to direct and cross-examination.
- For witness safety, some testimony may be accepted by phone, through the use of pseudonyms, or during closed proceedings.
- Commission members will deliberate and vote on findings of guilt, innocence, and sentencing in closed conference.
- A conviction requires a vote of two-thirds of the commission.
- A death sentence requires a unanimous vote.
- Sentences may also include life imprisonment or a lesser term, fines and restitution, or any other punishment deemed appropriate.
- A three-member Review Panel, appointed by the Secretary of Defense, will review trial findings within 30 days and either provide a recommendation to the Secretary of Defense or return the case for further proceedings. The panel will include three military officers but may also include civilians temporarily commissioned as military officers.
- Findings and sentences are not final until approved by the President or Secretary of Defense, but findings of “Not Guilty” cannot be changed.
- The procedures may be amended by the Secretary of Defense to accommodate changed circumstances.

The above information, while deemed reliable, does not constitute a definitive statement of the procedures applicable to military commissions established under the President’s Military Order of November 13, 2001.