



GENERAL COUNSEL

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INFO MEMO

February 26, 2003, 6 p.m.

FOR: SECRETARY OF DEFENSE

FROM: William J. Haynes II, General Counsel *WJ Haynes*

SUBJECT: Definitions of Crimes for Trials by Military Commission

- As you directed, we have been getting ready to use military commissions to bring certain detainees to trial.
- Among the tasks remaining is one on which I have briefed you before—finalizing a General Counsel Instruction defining the crimes and elements for offenses triable by military commission.
- My staff has vetted this draft document within this Department, with other agencies in the U.S. Government, and with a variety of experts outside of government. We have also briefed the staffs of the Senate Armed Services Committee and the House and Senate Judiciary Committees.
- I intend to post the draft document on the DoD website. The goal is to provide a final opportunity for input—thus ferreting out the most problematic criticism before finalizing the document. This release is scheduled for Friday, 28 February.
- While I expect this release will result in some public attention, I do not believe such attention will be significant in light of other current events.
- Nevertheless, Dr. Rice has requested repeatedly that you should make the President aware of the release. Accordingly, I believe you should mention it to him.
- I have attached talking points. I will also provide a copy of these talking points to Judge Gonzales.

COORDINATION: NONE

Attachments:  
As stated



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## TALKING POINTS

**SUBJECT: Definitions of Crimes for Military Commissions**

- To prepare to use military commissions, we need to publish a document defining the crimes that are triable by military commission.
- Since this document will be viewed as an indication of how extensively the Government plans to use military commissions, public attention is likely.
- We intend to make the draft public for a short period of time (by targeted letter and internet posting beginning on Friday, February 28th) to ferret out the most significant criticism before finalizing it.
- The draft is not intended to be a comprehensive list of crimes triable by military commission. A sampling of the crimes detailed in the draft includes:
  - Attacking Civilians
  - Taking Hostages
  - Using Treachery or Perfidy
  - Terrorism
  - Conspiracy (to commit one of the substantive crimes)

