

NEW YORK
CITY BAR

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January 9, 2007

The Honorable Robert M. Gates
Department of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

Re: Procedures for Military Commissions

Dear Secretary Gates:

I am writing on behalf of the Association of the Bar of the City of New York¹, to suggest that your required report to the Senate and House Armed Services Committees, setting forth the procedures for Military Commissions, establish a period of public comment before the procedures take effect.

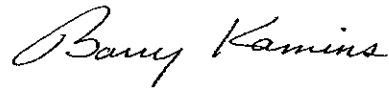
Last October, President Bush signed into law the Military Commissions Act, the Congressional response to the Supreme Court's opinion in *Hamdan v. Rumsfeld*. The Act requires you to deliver, to the Committees on Armed Services of the Senate and House, a report setting forth procedures for the conduct of military commissions. (We previously wrote to John D. Altenburg, Jr., Appointing Authority, Office of Military Commissions, and suggested a public comment period be permitted before the rules were finalized, but receive no response.) We are writing to suggest that, consistent with the Act and in the interest of the fair administration of justice and the national interest, you incorporate a period of public comment into your report to the Congressional committees. This could be accomplished by delivering a report which expressly provides that the procedures set forth are to become effective on a certain date, and separately establishing, in the interim, a specified shorter period of public comment. This course would be consistent with the Act's provision requiring 60 days' notice to the same committees before any proposed changes to the rules became effective.

The procedures governing the commissions will not merely complete a ministerial framework outlined in the Act, but will substantively affect the prosecution and defense

¹ The Association is an independent non-governmental organization with a membership of more than 22,000 lawyers, judges, law professors and government officials, principally from New York City, but also from around the United States and from 50 other countries.

of those tried by commissions. The resulting trials by commission will resonate among both our allies and enemies, and are sure to be analyzed and debated for years. It is in the national interest that these trials, as much as any, be administered with scrupulous fairness. With that in mind, a careful review of commission procedures is merited, and the consideration of expertise and knowledge beyond the halls of government would enhance the credibility of the ultimate product. We respectfully suggest that the recommended period of public comment would promote confidence in the fair administration of justice and would redound to the benefit of the United States' moral authority in the war on terror. Thank you for your consideration of this suggestion.

Respectfully,

A handwritten signature in cursive script that reads "Barry Kamins".

Barry Kamins

CC: Hon. Harry Reid
Hon. Mitch McConnell
Hon. John Warner
Hon. Carl Levin

Hon. Nancy Pelosi
Hon. John Boehner
Hon. Ike Skelton
Hon. Duncan Hunter