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	AEX-00	AS-01	A-00	ACQ-00	CA-01	CCO-00	CG-00
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	DOTE-00	ANHR-00	WHA-00	SRPP-00	DS-00	MEDE-00	EAP-00
	EB-00	EUR-00	OIGO-00	FAAE-00	FBIE-00	UTED-00	VC-00
	FSI-00	OBO-00	H-01	TEDE-00	INR-00	INSE-00	IO-00
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	NRCE-00	NSAE-00	NSCE-00	OCS-03	OIC-02	OIG-03	OMB-01
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TO AMEMBASSY KABUL IMMEDIATE

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AMEMBASSY ALGIERS IMMEDIATE
AMEMBASSY CANBERRA IMMEDIATE
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AMEMBASSY KUWAIT IMMEDIATE
AMEMBASSY RABAT IMMEDIATE
AMEMBASSY ISLAMABAD IMMEDIATE
AMEMBASSY DOHA IMMEDIATE
AMEMBASSY MOSCOW IMMEDIATE
AMEMBASSY RIYADH IMMEDIATE
AMEMBASSY MADRID IMMEDIATE
AMEMBASSY DAMASCUS IMMEDIATE
AMEMBASSY DUSHANBE IMMEDIATE
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AMCONSUL ISTANBUL IMMEDIATE
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AMEMBASSY ABU DHABI IMMEDIATE
AMEMBASSY LONDON IMMEDIATE
AMEMBASSY TASHKENT IMMEDIATE
AMEMBASSY SANAA IMMEDIATE
INFO ALL DIPLOMATIC AND CONSULAR POSTS PRIORITY

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SENSITIVE

E.O. 12958: N/A.
TAGS: PTER, PREL, KAWC, KJUS, Klig
SUBJECT: PROCEDURES FOR U.S. MILITARY COMMISSIONS
CONDUCTED PURSUANT TO THE PRESIDENT'S MILITARY ORDER

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REF: STATE 020095

1. (U) THIS IS AN ACTION MESSAGE. SEE PARA 4. INFO ADDRESSEES SHOULD USE THESE POINTS ON AN "IF ASKED" BASIS.
2. (SBU) REFTTEL ADVISES POSTS OF U.S. POLICY POSITIONS REGARDING TRANSFER OF <<DETAINEEES>> FROM <<AFGHANISTAN>> TO THE U.S. NAVAL STATION, GUANTANAMO BAY, CUBA. AS STATED IN REFTTEL, THE U.S. GOVERNMENT HAS NOT YET MADE A DECISION ON IF AND WHAT CRIMINAL CHARGES MAY BE BROUGHT AGAINST <<DETAINEEES>> IN GUANTANAMO OR IN WHICH LEGAL FORUM THEY MIGHT BE BROUGHT. THE U.S. IS VERY INTERESTED IN KNOWING MORE DETAIL ABOUT THE LEGAL STEPS THAT GOVERNMENTS MIGHT BE PREPARED TO TAKE AGAINST THEIR CITIZENS UNDER U.S. CONTROL IN GUANTANAMO BAY.
3. (U) ON NOVEMBER 13, 2001, PRESIDENT BUSH ISSUED A

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MILITARY ORDER AUTHORIZING THE SECRETARY OF DEFENSE TO
 DETAIN CERTAIN NON-U.S. CITIZENS SUSPECTED OF ACTS OF

INTERNATIONAL TERRORISM, AND AUTHORIZING TRIAL BY MILITARY
 COMMISSION OF THOSE INDIVIDUALS UNDER SELECTED
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 CIRCUMSTANCES. THE PRESIDENT FOUND THAT THE <<UNITED>> <<STATES>>
 IS IN AN ARMED CONFLICT, AND THAT THE PROTECTION OF <<UNITED>>
 <<STATES>> CITIZENS AND PROPERTY PERMITS SELECTED INDIVIDUALS
 IN U.S. <<CUSTODY>> TO BE TRIED FOR VIOLATIONS OF THE LAWS OF
 WAR. THE MILITARY ORDER FURTHER REQUIRED THE SECRETARY OF
 DEFENSE TO ISSUE SUCH ORDERS AND REGULATIONS AS MAY BE
 NECESSARY TO PROSECUTE <<DETAINEES>> IN MILITARY COMMISSIONS
 INCLUDING RULES FOR THE CONDUCT OF PROCEEDINGS. THE
 SECRETARY OF DEFENSE WILL ISSUE THE PROCEDURES GOVERNING
 MILITARY COMMISSIONS ON MARCH 21, 2002. THE REGULATIONS
 ISSUED BY THE SECRETARY OF DEFENSE WILL NOT PRESCRIBE ANY
 PARTICULAR OUTCOME OR ANY SPECIFIC JUDICIAL FORUM FOR ANY
 PARTICULAR <<DETAINEE>>.

4. (SBU/REL) ALL POSTS WHOSE HOST GOVERNMENT HAS
 NATIONALS DETAINED AT GUANTANAMO BAY ARE REQUESTED TO
 IMMEDIATELY DELIVER THE FOLLOWING TALKING POINTS TO THE
 MOST SENIOR OFFICIALS POSSIBLE. ALL OTHER POSTS MAY USE
 THESE POINTS FOR INFORMATIONAL PURPOSES OR IF ASKED BY
 LOCAL GOVERNMENTAL OFFICIALS OR MEDIA.

 TALKING POINTS: MILITARY COMMISSION PROCEDURES

- THE SECRETARY OF DEFENSE IS FINALIZING THE PROCEDURES
 GOVERNING U.S. MILITARY COMMISSIONS THAT MAY BE
 ESTABLISHED TO TRY SUSPECTED INTERNATIONAL TERRORISTS
 AND THEIR SUPPORTERS FOR VIOLATIONS OF THE LAW OF WAR.
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 THE PRESIDENT HAD DIRECTED HIM TO PREPARE SUCH RULES IN
 THE MILITARY ORDER OF NOVEMBER 13. THE RULES WERE
 MADE PUBLIC ON THURSDAY, MARCH 21.

- WE BELIEVE THAT YOUR GOVERNMENT SHOULD BE PLEASED WITH
 THE OUTCOME.
- THE PROCEDURES TAKE INTO ACCOUNT THE MANY COMMENTS THAT
 WE HAVE RECEIVED FROM OUR ALLIES, AS WELL AS HUMAN

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RIGHTS GROUPS AND OTHER NONGOVERNMENTAL ORGANIZATIONS.

- THE MILITARY COMMISSIONS WILL BE IMPARTIAL. THEY WILL PROVIDE FULL AND FAIR TRIALS. WE BELIEVE THAT THE PROCEDURES FOR THE COMMISSIONS PROVIDE APPROPRIATE DUE PROCESS SAFEGUARDS. THEY ARE CONSISTENT WITH FUNDAMENTAL INTERNATIONAL STANDARDS GOVERNING CRIMINAL TRIALS.
- THEY ARE CONSISTENT WITH THE PROCEDURAL SAFEGUARDS FOUND IN THE GENEVA CONVENTIONS OF 1949 AND ARTICLE 75 OF PROTOCOL 1 OF 1977 TO THE GENEVA CONVENTIONS. (THE <<UNITED>> <<STATES>> IS NOT A PARTY TO THE PROTOCOL.)
- ALTHOUGH THE PROCEDURES ADDRESS A DIFFERENT BODY OF LAW, THEY ARE ALSO CONSISTENT WITH THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS.
- IN PARTICULAR, THE PROCEDURES INCLUDE THE FOLLOWING:
 - THE PRESUMPTION OF INNOCENCE

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 -- CHOICE OF MILITARY AND CIVILIAN COUNSEL

-- THE HIGH STANDARD OF PROOF OF GUILT BEYOND A REASONABLE DOUBT

-- THE <<DEATH>> PENALTY CAN ONLY BE IMPOSED BY A UNANIMOUS DECISION OF A 7 MEMBER PANEL

-- REVIEW BY AN IMPARTIAL, 3 MEMBER PANEL (POSSIBLY INCLUDING CIVILIANS WHO ARE TEMPORARILY COMMISSIONED)

THE ACCUSED IS NOT REQUIRED TO TESTIFY, AND NO ADVERSE INFERENCE MAY BE DRAWN FROM A REFUSAL TO TESTIFY.

THE ACCUSED MAY PRESENT EVIDENCE IN HIS DEFENSE AND MAY CROSS-EXAMINE WITNESSES PRESENTED BY THE PROSECUTION.

PROCEEDINGS WILL BE OPEN TO THE PUBLIC "TO THE MAXIMUM EXTENT PRACTICABLE" (BUT THEY CAN BE CLOSED TO PROTECT NATIONAL SECURITY AND OTHER INTERESTS). AT ALL TIMES,

INCLUDING IN ANY CLOSED PROCEEDINGS, THE ACCUSED WILL BE REPRESENTED BY COUNSEL, AND DEFENSE COUNSEL WILL HAVE ACCESS TO ANY CLASSIFIED EVIDENCE ADMITTED AT TRIAL.

- THE PROSECUTION WILL PROVIDE THE ACCUSED WITH ACCESS TO EVIDENCE THE PROSECUTION INTENDS TO INTRODUCE AT TRIAL AND WITH ACCESS TO EVIDENCE KNOWN TO THE PROSECUTION THAT IS INCONSISTENT WITH THE ALLEGED GUILT OF THE ACCUSED.

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- THE REVIEW PANEL HAS THE AUTHORITY TO RETURN THE CASE FOR FURTHER PROCEEDINGS IF A MAJORITY OF ITS MEMBERS HAVE A DEFINITE AND FIRM CONVICTION THAT A MATERIAL ERROR OF LAW OCCURRED.
- NO INDIVIDUALS HAVE YET BEEN DESIGNATED FOR TRIAL BY MILITARY COMMISSION AND NO MILITARY COMMISSIONS HAVE YET BEEN ESTABLISHED.
- THE USG REMAINS INTERESTED IN KNOWING AS MUCH DETAIL AS HOST GOVERNMENT CAN PROVIDE ON THE LEGAL STEPS THE HOST GOVERNMENT MAY BE PREPARED TO TAKE AGAINST YOUR CITIZENS IN U.S. CONTROL AT GUANTANAMO BAY.

END POINTS.

5. (U) THE FOLLOWING FACT SHEET WILL BE ISSUED BY THE DEPARTMENT OF DEFENSE ON MARCH 20, 2002.

FACT SHEET

DEPARTMENT OF DEFENSE ORDER ON MILITARY COMMISSIONS

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

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- PEOPLE INVOLVED IN ACTS OF INTERNATIONAL TERRORISM AGAINST THE <<UNITED>> <<STATES>>
- PEOPLE WHO KNOWINGLY HARBORED SUCH TERRORISTS
- COMMISSION MEMBERSHIP AND SELECTION

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- 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

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 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.

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- 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.

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- 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

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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.

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- 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.

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