

PUBLIC PARTICIPATION AND THE
2010 MANUAL FOR MILITARY COMMISSIONS

April 5, 2010

As a new round of military commission trials takes shape at Guantanamo Bay, an important piece of unfinished business is revision of the Manual for Military Commissions. The 2010 Manual will spell out the specifics of proceedings under the Military Commissions Act of 2009. The Department of Defense has been working on this revision for some time but has not made a draft available for public comment, even though doing so is the norm for both federal court and court-martial rule making. An opportunity for public comment may produce improvements in the final text. But even if it generates no changes, it will foster improved public confidence in the rules ultimately issued and in the administration of justice by military commissions. Once the Manual is promulgated and submitted to Congress, it will be far harder as a practical matter for changes suggested from outside the government to be adopted.

We therefore call on the Department to make the pending revision of the Manual for Military Commissions available for public comment before promulgation and submission to Congress. The comment period should be at least 30 days, given the size and scope of the Manual. The Department should also make available an analysis that highlights and explains changes from the 2007 Manual and establish a broad-based, balanced advisory committee to consider future changes.

There is no reason to conduct this critical process in secret, especially given the Administration's stated commitment to transparency. Failing to involve the public in the ways suggested here will only fuel existing concerns about the commissions.

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