

## The Terror Courts: Rough Justice at Guantanamo Bay<sup>1</sup>

Reviewed by Major Thomas S. Hong\*

*A country without law is a jungle. If we are law governed, if we live up to our values, if we don't see national security and law as a contradiction in terms—we can persuade individuals that these trials are fair.*<sup>2</sup>

### I. An American Legal and Human Rights Controversy

Controversy surrounding the detention camps of Joint Task Force Guantanamo and its deployment in the War on Terrorism has surpassed its twelfth year.<sup>2</sup> Wedded to the detention operations at Guantanamo Bay (Gitmo) are the military commissions set up “to try alien unprivileged enemy belligerents for violations of the law of war and other offenses . . . .”<sup>3</sup> Even with the improvements to the commissions, persistent challenges remain as to its implementation and exit strategy.<sup>4</sup>

Among the prominent figures involved in the commissions, Brigadier General Mark S. Martins of the U.S. Army Judge Advocate General's Corps was selected to supervise the prosecution of Khalid Sheikh Mohammed and

four other co-conspirators to the 9/11 attacks.<sup>5</sup> Since his October 2011 appointment as Chief Prosecutor of the commissions, Brigadier General Martins has advocated for the continued use of the commissions in speeches and interviews.<sup>6</sup> In light of this recent effort to portray the military commissions in its most positive light, a good primer on the history and issues surrounding the commissions helps the practitioner understand the context and import of Brigadier General Martins' arguments, and most importantly, the stakes involved.<sup>7</sup>

To fill the knowledge gap, Jess Bravin's *Terror Courts* is highly recommended for an overarching backstory to what may be one of the greatest American legal and human rights controversies of the twenty-first century. A Boalt Hall-educated legal correspondent for the *Wall Street Journal*, Bravin got on the military commission trail shortly after reporting from Ground Zero on 11 September 2001.<sup>8</sup> Following this report, he continued to cover the legal aftermath of the attacks; namely, the legislation that would eventually become known as the Patriot Act.<sup>9</sup> When he

---

\* Judge Advocate, U.S. Army. Presently assigned as Litigation Attorney, General Litigation Division, U.S. Army Legal Services Agency, Fort Belvoir, Virginia.

<sup>1</sup> JESS BRAVIN, *THE TERROR COURTS: ROUGH JUSTICE AT GUANTANAMO BAY* (2013).

<sup>2</sup> Brigadier General Mark Martins, Chief Prosecutor, Military Comm'ns, U.S. Army, Judge Advocate Gen.'s Corps, LENS Conference: A Conversation with the Chief Prosecutor (Mar. 1, 2013), available at Youtube, [http://www.youtube.com/watch?v=pdAI9nMr\\_2U](http://www.youtube.com/watch?v=pdAI9nMr_2U) (video clip posted by Dukelaw (Mar. 1, 2013) (discussing military commissions and the Military Commissions Act of 2009).

<sup>3</sup> John T. Woolley & Gerhard Peters, The American Presidency Project, President George W. Bush: Military Order—Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism (Nov. 13, 2001), available at <http://www.presidency.ucsb.edu/ws?pid=63124>. “The first detainees arrived from Kandahar on Friday, January 11, 2002.” BRAVIN, *supra*, note 1, at 77.

<sup>4</sup> 10 U.S.C. § 948b (2012). The Military Commissions Act of 2009, Public Law 111-84 (MCA), signed by President Barack Obama on 28 October 2009, authorizes the President to create military commissions. It lays out who can be charged, tried, and punished, and outlines the accused's basic rights and procedures for conducting the commissions. The 2009 MCA superseded the 2006 Military Commissions Act. See *Military Commissions History*, OFFICE OF MILITARY COMM'NS, <http://www.mc.mil/ABOUTUS/MilitaryCommissionsHistory.aspx> (last visited June 9, 2014).

<sup>5</sup> See, e.g., Human Rights First, *Guantanamo: A Comprehensive Exit Strategy*, July 21, 2013, available at <http://www.humanrightsfirst.org/resource/guantanamo-comprehensive-exit-strategy> (“[Even] the military commission cases of the alleged 9/11 plotters and the alleged USS Cole bomber have been beset with scandal (e.g., the CIA was discovered to have the ability to censor the proceedings) and legal uncertainty (e.g., the presiding judge was unsure whether the Constitution applied).”). For a list of some earlier articles critical of the 2001 creation of the military commissions, see Major Michael O. Lacey, *Military Commissions: A Historical Survey*, ARMY LAW, Mar. 2002, at 41, 41 n.3.

---

<sup>6</sup> Brigadier General Martins's speeches are available on Youtube. Transcriptions to Brigadier General Martins's Keynote Address at the American Bar Association's 21st Annual Review of the Field of National Security Law: Legitimacy and Constraint in Reformed Military Commissions (1 Dec. 2011) are available at [http://www.americanbar.org/content/dam/aba/events/law\\_national\\_security/mark\\_martins\\_key-note\\_address.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/events/law_national_security/mark_martins_key-note_address.authcheckdam.pdf).

<sup>7</sup> An example of a counterpoint to Brigadier General Martins's advocacy of military commissions prosecution comes from William K. Lietzau, a retired U.S. Marine Corps colonel and judge advocate. Lietzau, while serving as a National Security Council staff member, recommended to President Obama's White House counsel, Gregory Craig, “to pull the plug” on the military commissions altogether. Lietzau reasoned that the “exigent circumstances” that “may have once justified establishing a parallel system of rough justice for enemy aliens long had passed.” BRAVIN, *supra*, note 1, at 355. Lietzau also believed that conviction in federal court was the gold standard and beyond scrutiny, while “a military commission conviction would be clouded for years by appeals through the federal court system, which would still have to resolve such basic questions as which, if any, constitutional provisions applied . . . .” *Id.*

<sup>8</sup> See *Journalist Jess Bravin '97 Wins Jacobs Fellowship*, BERKELEY LAW.EDU (Sept. 5, 2006), <http://www.law.berkeley.edu/4015.htm>. Bravin graduated from the University of California at Berkeley, School of Law, commonly known as Boalt Hall. *Id.*; see also Jess Bravin: Law, Politics, & the Media Lecture Series (Sept. 5, 2006) [hereinafter Bravin Presentation at Syracuse Law School], available at YOUTUBE, <http://www.youtube.com/watch?v=pGWcbWNkRJu> (video clip posted by SyracuseLaw on Apr. 15, 2013).

<sup>9</sup> *Id.*

<sup>10</sup> See Interview by Mark Robertson with Jess Bravin, The “Who, What, and Why” Behind Guantanamo: An Interview with Jess Bravin, in Los

discovered that the idea of reviving the military commissions was afoot, he became “quite interested” and began covering it before President Bush signed the military order on 13 November 2001 establishing the military commissions.<sup>10</sup>

Driven by natural curiosity and a legally trained mind, Bravin doggedly pursues the inside story of the military commissions from its rebirth, development, and iterations.<sup>11</sup> Bravin employs great storytelling and behind-the-scenes expositions of the commissions’ movers and shakers. Like a seasoned trial lawyer before a seated jury, Bravin knows his audience and keeps them engaged with dramatic stories of the people involved in making legal and political history. In addition to containing a compelling story of the struggles and relative triumphs of political elites, government lawyers, and defendants, *Terror Courts* provides valuable lessons for government and military lawyers who may one day find themselves caught up in history-making cases.

## II. “More a Narrative Than a Law Book”<sup>12</sup>

By his own assessment, Bravin asserts his book is more of a narrative of what happened in the military commission cases than a “law book.”<sup>13</sup> To that end, Bravin skillfully tells the story of the commissions and the people who played a key role in this portion of government and military history. The storyline is quite simple. After the hijacking and the terrorist attacks on U.S. soil transpired on 11 September 2001, President Bush created the military commissions on the advice of a small group of individuals.<sup>14</sup> The President ordered the military commissions into existence with the expectation that the trials would be full and fair, but that punishments—including the death penalty—would be imposed quickly. This was due in part to its stripped-down military nature and the lack of any appeal rights.<sup>15</sup>

---

Angeles, Ca. (May 22, 2013), L.A. REV. OF BOOKS, available at <http://lareviewofbooks.org/interview/the-who-what-and-why-behind-guantanamo-an-interview-with-jess-bravin#>.

<sup>11</sup> *Id.*

<sup>12</sup> See Bravin Presentation at Syracuse Law School, *supra* note 8. It is unclear what Bravin means by a “law book,” but it is accurate to say that his book is more of a historical novel than a treatise or hornbook on the modern-day military commissions.

<sup>13</sup> *Id.*

<sup>14</sup> See *infra* note 27 and accompanying text.

<sup>15</sup> BRAVIN, *supra*, note 1, at 38.

<sup>16</sup> The prosecutors’ discovery of some form of torture of detainees while under U.S. custody is introduced in the book through the eyes of Vernon Stuart Couch, a U.S. Marine Corps lieutenant colonel judge advocate who was one of the first military prosecutors to volunteer to join the prosecution staff at the Office of Military Commissions. *Id.* at 8–9; see *infra* note 32 and accompanying text. During one of the first visits to Guantanamo, Couch saw a detainee kneeling on the floor with flashing strobe lights and deafening, heavy-metal music playing. *Id.* at 84. Later, one of the defendants (Ahmed al-Darbi) that Couch was to prosecute was found to have been physically and sexually assaulted more than a dozen times by

Once the order was signed, the military commissions’ lawyers were selected and the wheels of justice began to turn. The problem was that principled and independent military prosecutors—and later military defense lawyers—saw significant issues with bringing the cases to trial because the detainee-defendants were abused and tortured while in U.S. custody.<sup>16</sup> The prosecuting lawyers complained to their superiors that the cases were tainted and fraught with legal landmines.<sup>17</sup> With pressure mounting to bring wrongdoers to swift justice, mixed with the general unsavoriness of trying such cases, internal office strife and personnel changes ensued.<sup>18</sup> It is interesting to note that even before the military prosecutors were named and assigned, The Judge Advocate Generals of the U.S. Army, Navy, Air Force, and Marine Corps expressed issues and doubts with the military commissions draft proposal.<sup>19</sup>

The latter part of the book deals with how certain members of the State Department and the Office of the Military Commissions, along with members of the legislative and judicial branches, worked to undo—or at least fix—the problematic parts of the 13 November 2001, Presidential Military Order.<sup>20</sup> By 2006, the U.S. Supreme Court in *Hamdan v. Rumsfeld*<sup>21</sup> ruled that the commissions

---

U.S. government agents, e.g., being dragged and thrown against walls; punched in the chest and stomach; made to urinate and defecate in the street; and sexually touched and humiliated. *Id.* at 268–69.

<sup>17</sup> Legal landmines, such as the suppression of a defendant’s statements obtained through coercive interrogation methods, risked the prosecution’s case since most of the evidence against the defendants came from “detainee statements—or, rather, summaries of detainee statements, paraphrased by an interrogator and edited by higher-ups.” *Id.* at 83.

<sup>18</sup> *Id.* at 136–39.

<sup>19</sup> *Id.* at 39. Bravin states that the top military lawyers only had thirty minutes to review and comment on the draft document. This vignette sets up the theme that runs throughout the story: conflicts between military lawyers and “political appointees such as [John] Yoo and [David] Addington.” *Id.*; see also *infra* note 27 and accompanying text; see generally Major General (Retired) Thomas J. Romig, *The Thirty-First Charles L. Decker Lecture in Administrative and Civil Law*, 220 MIL. L. REV. (forthcoming Fall 2014) [hereinafter Romig Lecture]. “[T]o our surprise, the President signed and issued the military order that established Military Commissions. They had ignored all of our comments, all of our advice; all they wanted, apparently, was a rubber stamp.” *Id.*

<sup>20</sup> Bravin peppers the second half with vignettes of individuals and offices that tried to improve the commissions. Examples include Couch’s memorandum itemizing what he saw as problems with the military commissions, Condoleezza Rice’s attempt, as the Secretary of State, to bring commissions closer to international legal standards, and Commissions Appointing Authority John Altenburg’s 232-page proposed rulebook. *Id.* at 240–44, 272–84. Chapter 14 of the book begins with stories of Senator Lindsey Graham’s actions to understand and fix the commissions’ problems through the passage of legislation. *Id.* at 309–12. Bravin also describes several Supreme Court cases in his book, such as *Rasul v. Bush*, the case that held that U.S. courts can consider challenges to the detention of foreign nationals captured abroad in connection with hostilities and incarcerated at Guantanamo Bay. *Id.* at 167–68; see also *Rasul v. Bush*, 542 U.S. 466, 480–82 (2004).

<sup>21</sup> 548 U.S. 557 (2006).

<sup>22</sup> 10 U.S.C. § 948a-d (2012). “In response to the Hamdan ruling, Congress enacts the Military Commissions Act (MCA) of 2006. The 2006 MCA

convened under President Bush's order did not have the power to try the detainee. In response, Congress passed the Military Commissions Act of 2006.<sup>22</sup> Further reforms were later passed in the Military Commissions Act of 2009, the replacement to the 2006 law.<sup>23</sup> After struggling to bring any case to trial, the military commissions finally did so in 2007, but the outcome failed to match the track record of severe punishments netted by the Department of Justice (DoJ) in its prosecutions of terrorists in U.S. District Courts.<sup>24</sup>

---

authorizes the trial by military commission of alien unlawful enemy combatants engaged in hostilities against the U.S. for violations of the law of war and other offenses triable by military commission." *Military Commissions History*, OFFICE OF MILITARY COMMISSIONS, <http://www.mc.mil/ABOUTUS/MilitaryCommissionsHistory.aspx> (last visited June 5, 2014). Bravin notes that then-Senator Barack Obama voted against the bill. BRAVIN, *supra*, note 1, at 312.

<sup>23</sup> Congress enacted the Military Commissions Act of 2009 as part of the Department of Defense Authorization Act (NDAA) for FY2010, Pub. L. No. 111-84, 123 Stat. 2190 (2009).

The 2009 MCA expands the rights of an accused to align more closely with the rights afforded to an accused in courts-martial and federal criminal cases. It enhances an accused's rights to counsel, including the right to request a specific counsel from the defense pool and, in capital cases, to have counsel with expertise in capital cases. The 2009 MCA also prohibits the use in evidence of statements that were obtained by torture or cruel, inhuman, and degrading treatment.

*Military Commissions History*, OFFICE OF MILITARY COMMISSIONS, <http://www.mc.mil/ABOUTUS/MilitaryCommissionsHistory.aspx> (last visited June 5, 2014).

<sup>24</sup> See BRAVIN, *supra* note 1, at 374–75. David Hicks, a young Australian citizen, was the first detainee to be tried after the Military Commissions Act of 2006. He pled guilty to and was convicted of providing material support for terrorism. His formal sentence was seven years, but he would only serve nine months in an Australian prison. *Id.* Bravin also gives significant details of the commissions trial of Salim Ahmed Salim Hamdan, the driver for Osama bin Laden. He was found guilty of providing material support for terrorism, but not guilty of conspiracy. *Id.* at 334. Hamdan's sentence was confinement for sixty-six months with sixty-one months credited for time already served in confinement. *Id.* at 341–42. Compared to the military commissions, the Department of Justice prosecutions of terrorists resulted in higher confinement terms. For example, Mohamad Ibrahim Shnewer, brothers Dritan Duka, Shain Duka, and Eljvir Duka, and Serdar Tatar, were convicted of plotting to kill U.S. Soldiers in an armed attack on the military base in Fort Dix, New Jersey. Their sentences ranged from thirty-three years in prison to life in prison plus thirty years. See Press Release, U.S. Department of Justice, Fact Sheet: Prosecuting and Detaining Terror Suspects in the U.S. Criminal Justice System (June 9, 2009), available at <http://www.justice.gov/opa/pr/2009/June/09-ag-564.html>.

<sup>25</sup> The other co-conspirators are Walid bin Attash (aka Khallad), who is accused of running an al Qaeda training camp and observing airport security in Malaysia to formulate a hijacking plan; Ramzi Binalshibh, who is accused of assisting the 9/11 hijackers with financial transactions and helping them find flight schools; Ali Abdul Aziz (Khalid Sheikh Mohammed's nephew and aka Amar al-Baluchi), who is accused of sending \$127,000 to the hijackers for their expenses and flight training and helping to facilitate their travel to the United States; and Mustafa Ahmed Adam al-Hawsawi, who is accused of assisting the hijackers with money, Western clothing, traveler's checks, and credit cards. BRAVIN, *supra* note 1, at 321–22.

The book ends with a description of the pending joint trial of Khalid Sheikh Mohammed (KSM)—the self-professed mastermind behind the 11 September 2001 attacks—and four alleged co-conspirators.<sup>25</sup> The proceedings were so mired in pretrial and constitutional issues that an actual trial date was set one year from the arraignment.<sup>26</sup> Although Bravin does not say it outright, he lets the story conclude with the implication that the military commissions are a failed project of the Bush Administration that President Obama inherited and—for political and other reasons—could not put out to pasture.

### III. Movers and Shakers

Bravin's book is compelling because he weaves into the story the personal motivations and world views of the people behind the establishment of the commissions. Bravin uses biographical information to show what motivated key influencers to use military commissions rather than the DoJ in federal court for prosecution. Bravin's story makes clear that the modern-day military commissions were not the brainchild of President George W. Bush. Rather, the movers and shakers behind military commissions included David Addington, the legal advisor to Vice President Dick Cheney; John Yoo,<sup>27</sup> Deputy Assistant U.S. Attorney General in the Office of Legal Counsel; Donald Rumsfeld, Secretary of Defense; and Dick Cheney, Vice President of the United States. This small inner circle believed the President, as Commander in Chief, had unbridled power to prosecute the terrorists involved in the multi-plane hijacking and suicide missions as war criminals.<sup>28</sup>

On the political side, Mr. Cheney obtained the President's approval for the military commissions at a private lunch meeting, and Mr. Rumsfeld was the action officer who executed it once it was issued.<sup>29</sup> For the most part, U.S. Attorney General John Ashcroft, the various military service Judge Advocate Generals, and other potential subject matter experts, were decisively cut out from the decision matrix.<sup>30</sup> Incredibly, the twenty-first century

---

<sup>26</sup> *Id.* at 368–70. Bravin notes that the defense refused to "acknowledge the venue's legitimacy, insisting that even threshold questions—such as whether the defendant wished to be represented by his lawyer—could not be addressed without first assessing the impact of confinement, abuse, and military interference with attorney-client communications prior to the hearing." *Id.*

<sup>27</sup> It appears that Mr. Addington was the top lawyer who had the political will and muscle to check any dissent from other agency lawyers about the commissions, while Mr. Yoo supplied the constitutional legal theories and justifications. Unfortunately, any legal review of Mr. Yoo's work by the Department of Justice or judge advocates was cut short intentionally. *Id.* at 37–43.

<sup>28</sup> *Id.* at 47–53.

<sup>29</sup> *Id.* at 43–44.

<sup>30</sup> *Id.*; see generally Romig Lecture, *supra* note 19.

American military commissions came about by the legal and political initiative of only about four individuals.

Moving from a focus on the top legal and political figures in the early days of the commissions, Bravin shifts the spotlight to the prosecutors and their supervisors assigned to the newly minted commissions by providing individual biographical information.<sup>31</sup> Judge advocates will be most familiar with these individuals and their professional backgrounds because they are all contemporary or former colleagues (several have retired from the military). As the main subject of chapter one suggests, Stuart Couch (known as “Tater” by his military friends) is the main character in Bravin’s book.<sup>32</sup>

Couch, who was a judge advocate in the U.S. Marine Corps, shares his struggles as a prosecutor dealing with the issue of detainee torture. The history of the military commissions becomes interwoven with Couch’s professional history. This is fortuitous for those seeking a good example of how a person should handle ethical and legal problems during one’s career. For Couch, the dilemma dealt with what to do with his growing sense that the defendants he was charged to prosecute were abused and tortured in one form or another, and that the only evidence the government could present against them at trial came from the defendants’ own admissions of guilt.<sup>33</sup> Couch did what most judge advocates should do when facing significant issues: he consulted his mentors for advice, talked with his spouse for support, examined his conscience, and kept his mind open to the possibility of speaking truth to power—even as a military officer and lawyer whose loyalty and duty were aligned to the Office of the Military Commissions.<sup>34</sup> Military and government lawyers will have much food for thought when considering the issues and dilemmas that Couch faced.

To keep the story complete and balanced, Bravin also gives relevant biographical sketches of some of the detainees whose names are associated with the military commissions as actual defendants or prospective defendants. Detainees

<sup>31</sup> Some of the notable military commissions prosecutors named in Bravin’s book are: Army Colonel Fred Borch (Retired); Navy Commander Scott Lang (Retired); Army Colonel Bob Swann (Retired, but stayed in the Office of the Military Commission as a Department of the Army civilian); Air Force Colonel Morris Davis (Retired); and Army Brigadier General Mark Martins.

<sup>32</sup> See Bravin Presentation at Syracuse Law School, *supra* note 8. Stuart Couch retired from the Marines in 2009 and is currently an Immigration Judge at the U.S. Department of Justice. Following his position as Senior Prosecutor for the Office of Military Commissions, he served for three years as a Senior Appellate Judge at the Navy-Marine Corps Court of Criminal Appeals. See BRAVIN, *supra* note 1, at 382; see also Stuart Couch, *Profile Overview*, LINKEDIN, <http://www.linkedin.com/pub/stuart-couch/4/5b7/955> (last visited June 9, 2014).

<sup>33</sup> See BRAVIN, *supra* note 1, at 145–50.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* at 68–69. Slahi is also suspected of recruiting Ziad Jarrah, the hijacker that crashed United Airlines Flight 93 in Pennsylvania. *Id.*

like Salim Ahmed Salim Hamdan (Osama bin Laden’s driver) and Mohamedou Ould Slahi (an al Qaeda leader who allegedly recruited Mohammed Atta (the ringleader) and Marwan al-Shehhi, the men who crashed the commercial jets on 11 September 2001) are profiled and covered extensively by Bravin.<sup>35</sup> In fact, Bravin first introduces Hamdan as early as the book’s prologue. Hamdan’s life story develops throughout the book and ends in a dramatic courtroom scene. After a relatively lenient sentence is announced, Hamdan interrupts the commission members from being excused to again apologize to them, the military judge, and everyone else in the room.<sup>36</sup> These stories humanize the detainees held at Gitmo and evoke a degree of sympathy for those caught and held there without any sign or hope of future release.<sup>37</sup> Even KSM seems to garner more sympathy after *Terror Court* describes the torture he faced.<sup>38</sup> How the trial of KSM and the alleged co-conspirators will turn out remains to be seen, but the success or failure of the military commissions is clearly tied to these cases.<sup>39</sup>

#### IV. Lessons Learned for Judge Advocates and Government Lawyers

In addition to providing an insider’s account of the military commissions’ creation and development, Bravin’s *Terror Courts* presents several lessons for judge advocates and government lawyers to consider. Many judge advocates are named in the book, and their words, actions, and characteristics are integrated into the commissions’ story. In telling the story of the military commissions, Bravin airs the proverbial dirty laundry sometimes found in legal offices.

<sup>36</sup> *Id.* at 334–42. Hamdan was sentenced to sixty-six months’ confinement and was given sixty-one months credit for time served. In his sentencing argument, prosecutor John Murphy had asked for thirty years at a minimum. The sixty-six months, Bravin points out, is only 1.6 percent of what was asked. *Id.*

<sup>37</sup> See *id.* at 376–77 (discussing the unlikely chance that Mohammed al-Qahtani, the alleged Twentieth Hijacker, will be released even when his prosecution case was rejected by the Convening Authority Susan Crawford in 2008 due to torture inflicted on him by U.S. interrogators).

<sup>38</sup> *Id.* at 88–89. Bravin provides a vignette where Couch reads the *Atlantic Monthly* magazine article by Mark Bowden describing KSM being “locked naked in a cell with no trace of daylight,” “filled day and night with harsh light and noise,” and “kept awake cold and probably wet.” *Id.*

<sup>39</sup> Near the end of the book, Bravin writes that the Army military judge, Colonel James Pohl, assigned to hear the KSM and co-defendants’ case, had set a tentative trial date of 5 May 2013. *Id.* at 370–71. Presently, the trial has not taken place, and the Military Judge Scheduling Order filed on 19 June 2014 is not available due to a pending “security review per the 2011 Regulation for Trial by Military Commission Chapter 19 Section 4.” The most recent Docketing Order that is available at the [www.mc.mil](http://www.mc.mil) website is dated 4 May 2014 and orders several motion hearings for 16–17 June 2014. See Amended Docket Order, *United States v. Khalid Shaikh Mohammad, et al.*, AE 302 (28 May 2014), available at <http://www.mc.mil/Portals/0/pdfs/KSM2/KSM%20II%20%28AE302%29.pdf>.

<sup>40</sup> See generally BRAVIN, *supra* note 1, at 131–53. Chapter 6 provides the best examples of leadership struggles and office strife.

Some of the judge advocates come out as outstanding lawyers, officers, and leaders, but most do not.<sup>40</sup>

The biggest lesson deals with leadership. Although the theme of failed leadership is present throughout the book, Bravin dedicates an entire chapter entitled “The Ides of March” to it. The chapter contains the events of the office turmoil that racked the Office of the Chief Prosecutor around March 2003.<sup>41</sup> Without rehashing the many issues and specifics involved, the lessons learned are the following: First, listen to your subordinates. They may be junior in rank or position and lack experience, but they are lawyers with independent thought and motivations. If their persistent, work-related complaints are not addressed to their satisfaction, larger problems will arise. Second, handle fundamental problems with candor and integrity. Do not hide issues from your own superiors, no matter how much higher wants something done without a hitch. Third, keep in mind that a journalist may find what you are doing important enough to write about, and if you have failed to address the problems in the office with your subordinates and superiors satisfactorily, your acts and omissions may show up in a book years after you have moved on to another assignment.<sup>42</sup>

## V. Conclusion

Bravin’s *The Terror Courts*, with its fluid stories and key characters, provides an easy-to-grasp history and development of the military commissions. *The Terror Court’s* theme and story show how the Bush administration lawyers saw the modern-day military commission as a powerful wartime justice apparatus that would be unleashed on all captured terrorists. The purpose was to obtain swift justice and to deliver the convicted to the punishment phase without undue delay. What the legal planners and their

political bosses did not realize at the time were the significant and persistent objections that the legal community—both inside and outside the executive branch—would raise. As any trial lawyer knows, with continued objections come court rulings, remedies, and lengthy delays. This is precisely what happened with the military commissions.

America has been dealing with the difficulties raised by the military commissions for over a decade, and there is still significant doubt and skepticism about how the pending trial of the so-called 9/11 mastermind and his co-conspirators will pan out.<sup>43</sup> However, amidst the doubts and negative opinions, it is certain that Brigadier General Martins and the commissions’ lawyers—be they prosecution or defense—will do their utmost to uphold justice and not let America down.

---

<sup>41</sup> *Id.* at 136 (describing scathing e-mails between judge advocates within the Office of the Chief Prosecutor for the public to read—and judge—regarding perceived leadership, ethical, and moral failures in the office).

<sup>42</sup> *See id.* at 141.

<sup>43</sup> The epilogue reveals Bravin’s ideological position. He highlights the persistent and thorny challenges for the reformed (and better staffed) commissions. He points out the following issues: that the differential legal treatment and standards for aliens may violate the Geneva Conventions and customary international law; how differential treatment may cause reciprocal action by hostile governments; how military commissions may actually net more lenient punishments than those in federal court; how detainees who underwent abuse at the hands of interrogators may never be prosecuted; and, finally, how the D.C. Circuit Court’s vacation of Salim Hamdan’s conviction for “material support for terrorism” have caused major legal issues for future cases. *Id.* at 377–78. After highlighting these difficult issues, Bravin concludes the book with a rhetorical statement. Describing the pending trials of the military commission, he writes, “[t]he question remains whether they can be done right at all.” *Id.* at 381. Bravin’s choice to finally close the book with Lieutenant Colonel Stuart Couch’s glory-filled medal citation may indicate that Bravin is hopeful and positive about the military commissions, but the fact that his last two words are “Donald Rumsfeld” seem to indicate the opposite. After all, the Defense Secretary was the main approval authority for detainee torture. *Id.* at 383.