



**NATIONAL INSTITUTE OF MILITARY JUSTICE
WASHINGTON, DC**

2006 ANNUAL REPORT
PREPARED FOR PERIOD ENDING APRIL 30, 2007

**Annual Report to Directors
National Institute of Military Justice (NIMJ)
Fiscal Year 2006**

The National Institute of Military Justice is an independent, not-for-profit organization that was founded in 1991, qualified under 501(c)(3), and incorporated in the District of Columbia. NIMJ has an independent board of directors and advisors that governs its activity; it affiliated with American University in October, 2005.

NIMJ has expanded its influence and activities exponentially during this past year. NIMJ achieved many of its planned goals, but more importantly was able to use unexpected, but timely, opportunities to advance military justice, largely due to the generous funding provided this past year by the Open Society Institute (OSI). An audited financial statement prepared by American University is attached to the end of this report, which includes the approved budget for the entire grant period. Because this was NIMJ's first foray into operating as a funded non-profit, adjustments will be made next year to reflect lessons learned during the course of this first year of full-time operation.

NIMJ continues to be a trusted press and media resource appearing in more than 1,000 print, radio, and television interviews both in the United States and around the world. NIMJ similarly advised other NGOs and instructed journalists on military law issues and sponsored timely programs on military justice programs attended by students, the public, and the press. Issues discussed include the effect of military law on detainees in Guantanamo Bay, especially in light of *Hamdan v. Rumsfeld*, the courts-martial arising from events in Haditha, Hamdaniyah, and Mahmudiyah, Iraq, the court-martial of the Naval Academy quarterback on charges of rape and conduct unbecoming an officer, and ongoing cases involving free speech rights, or lack thereof, of military personnel. Specific matters NIMJ has commented on include the Pat Tillman case, detainees in Guantanamo Bay and potential closure of the facility, the Welshofer general-court martial involving the death of Iraqi Major General Mowhoush during interrogation at an American detention center, disciplinary actions under Article 88, UCMJ, involving officers charged with using contemptuous words against the President, questions about changes to the Army's regulation governing the procedures to be used in executing death sentences in the military, comments on *Hamdan v. Rumsfeld*, the court-martial of Sgt. Cardona for using dogs in interrogation, and the investigation of civilian killings by Marines in Haditha. NIMJ provides substantial support to journalists to provide context, background material, legal analysis, and comment on pending relevant cases.

In addition to extensive media activities, we have been a force for reform in needed areas. Some of our more notable educational and advocacy activities are highlighted on the next few pages.

NIMJ:

- Sponsored two programs on military commissions, one on November 9, 2005 co-sponsored with WCL's Law and Government program, and another event that focused on the effect of the first proposed "Graham Amendment," held at the same time the Senate was debating the matter. The Graham amendment was a last-minute amendment to the 2006 Defense Authorization bill. Senator Lindsey Graham introduced this amendment to strip federal courts of habeas corpus jurisdiction to hear petitions by Guantanamo detainees. This second program was held as events were occurring in "real time."
- Drafted and submitted Congressional correspondence opposing the proposed Graham Amendment, which as passed, strips courts of jurisdiction to consider habeas proceedings brought by detainees in Guantanamo Bay, Cuba. Unprompted, Senator Jeff Bingaman of New Mexico read NIMJ's letter into the Congressional Record in support of his position in opposition to the Graham amendment.
- Continued its amicus work by filing an amicus brief urging the Supreme Court of the United States to grant certiorari in *Hamdan v. Rumsfeld*, a seminal case that will shape the future and use of military commissions by the United States against detainees being held at Guantanamo Bay. The Supreme Court granted certiorari in November 2005 and decided the case in June 2006.
- Participated in filing a brief, co-authored by the ACLU of the National Capital Region and the law firm of O'Melveny & Myers in *United States v. Lane*, which was argued before the Court of Appeals for the Armed Forces on November 10, 2005. The issue presented questions about whether United States Senator Lindsey Graham's service as a Colonel in the United States Air Force Reserve, assigned as an appellate military judge for the United States Air Force Court of Criminal Appeals, is unconstitutional under the Incompatibility Clause. The Court ruled that Sen. Graham's service in multiple capacities violated the Constitution.
- Served as a resource for Congress in support of a ban on torture.
- Hosted a group of visiting international military judges as part of a State Department program. NIMJ discussed trends in American military justice and offered the idea of developing a training program for international military judges that would assist fledgling countries to develop judicial systems in their host countries. Several attendees were interested in NIMJ offering a program like this in their host countries.
- Prepared an amicus brief for the United States Court of Appeals for the Armed Forces in *United States v. Miller*. The brief is posted at www.nimj.org. NIMJ took the position that this case is moot, but that if the Court were to reach the merits, it

should reject the government's contention that the Court must give *Chevron* deference to presidential rule-making on the withdrawal of court-martial appeals. The Court adopted NIMJ's position when it later decided the case.

- Hosted a dinner to allow NIMJ's Directors and Advisors to meet Dean Grossman and discuss future plans and collaborative opportunities.
- Officered a two-credit course in military justice at American University.
- Served as a continuing resource for other NGOs, such as Human Rights Watch and Human Rights First, working on command accountability issues arising from cases involving questionable interrogation techniques and deaths in U.S. custody.
- Attended the Mid-Year ABA Meeting Military Law Section and the Standing Committee on Armed Forces Law held in Chicago, Illinois on February 10 and 11, 2006.
- Participated in a roundtable discussion at the Stimson Center in connection with their report, *On Trial: The U.S. Military and the International Criminal Court*.
- Delivered the keynote address at a symposium on military justice at Roger Williams School of Law, Rhode Island.
- Served as a guest speaker for a panel entitled "Military Justice and the First Amendment" at the University of Hawaii School of Law.
- Hosted the United States Court of Appeals for the Armed Forces, which heard a case at Washington College of Law as part of the Court's Project Outreach. More information on the Court can be found at www.armfor.uscourts.gov. The Court heard oral argument in *United States v. Edmond* at WCL on April 20, 2006. The case involved Fifth and Sixth Amendment issues. The event included a question-and-answer session for the students with the Judges as well as a reception following that allowed student to interact with the judges and staff from the court.
- Sponsored a Founders' Day panel on April 20, 2006 at Washington College of Law entitled "Civilian Defense Counsel Trying Courts-Martial in Combat Conditions" at which four distinguished civilian practitioners related their experiences defending courts-martial in combat conditions in Vietnam, Afghanistan, and Iraq.
- Participated in a panel sponsored by Human Rights First and the New York City Bar Association to discuss Human Rights First's report entitled, "Command

Responsibility for Detainee Deaths in U.S. Custody” in New York on April 17, 2006.

- Participated in an all-day panel on April 22, 2006 at Columbia Law School entitled, “Jurisprudence and the War on Terror.” Information on the conference can be found at: <http://www.law.columbia.edu/jurisprudence?&>.
- Presented a major address on April 6, 2006 to the Section of International Law of the ABA, entitled “Accountability, Transparency, and Public Confidence in the Administration of Military Justice.”
- Attended the XVIIth International Congress of the International Society for Military Law and the Law of War in the Netherlands in May 2006 on “The Rule of Law in Peace Operations.” This Congress coincides with the Society’s 50th anniversary. NIMJ was the only United States NGO in attendance. NIMJ made valuable international contacts.
- Spoke at the British Institute of International and Comparative Law in London, England on June 1, 2006 presenting a talk entitled, “Guantanamo, Military Commissions, and the Rule of Law,” as part of a panel on national enforcement of international humanitarian law. NIMJ also met professors from The University of Hull, who have an exchange program already established with WCL and are interested in expanding programs and opportunities for its students.
- Testified before the Senate Armed Services Committee regarding NIMJ’s proposed language to amend the Uniform Code of Military Justice (UCMJ) in light of the *Hamdan* decision.
- Addressed a veterans’ group about NIMJ and its work and affiliation with the Washington College of Law, American University in South Carolina on June 19, 2006.
- Spoke at a seminar sponsored by the American Constitution Society on “National Security, Civil Liberties and Tribunals for Detainees,” on September 15, 2006 at the Dirksen Senate Office Building. Streaming video of event available at: <http://www.acslaw.org/node/3290>.
- Participated in the WCL Center for Human Rights and Humanitarian Law’s sponsorship of a program entitled *Hamdan v. Rumsfeld: Implications for Military Commissions* on September 26, 2006. This conference discussed the implications of *Hamdan*, including its impact on international law, separation of powers, habeas corpus, and how it affects practitioners and detainees at Guantánamo Bay. In addition, the conference focused on how *Hamdan* informs the current pending proposals on military commissions and due process for detainees at Guantánamo.

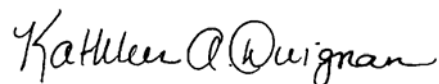
- Sponsored a program geared towards law professors entitled, “Recent Issues in Military Law: A Program for Teachers,” on November 17-18, 2006 at the Washington College of Law, American University.
- Hosted a program at the Washington College of Law, American University discussing the future of military commission on February 19, 2007 attended by students and the press and featured in an article by Corine Hegland of the *National Journal* discussing the flaws inherent in the military commissions system.
- Published several articles and op-ed pieces about military commissions and military justice, noting improvements that could be made in several areas.
- Provided a chapter on “Disorder in Military Courts “ for Century Foundation book, *Liberty Under Attack* (Public Affairs 2007).

NIMJ hopes to continue this work and other work in the upcoming years. Some of our future plans include reconvening the Cox Commission to discuss reforms in military justice, further comments on rule-making by the Court of Appeals for the Armed Forces and the Department of Defense, and future amicus curiae opportunities. Additionally, NIMJ hopes to sponsor training for international military judges and further educational opportunities at law schools, seeking to identify and develop military justice reformers at the source. We continue to monitor developments concerning the military commissions, and intend to remain actively involved in those matters, related litigation, and discussion of potential corrective legislation.

NIMJ's single highest priority is to secure long-term, multiple-source funding to enable us to broaden and deepen our activities.

If you have questions about these plans or any of our other past work, please feel free to contact Kathleen A. Duignan at 202-274-4322 or duignan@wcl.american.edu or Eugene R. Fidell at 202-466-8960 or efidell@feldesmantucker.com.

Respectfully submitted,



Kathleen A. Duignan
Executive Director
April 30, 2007

**NATIONAL INSTITUTE OF MILITARY JUSTICE
1991-2007**

OFFICERS

Eugene R. Fidell, *President*, 1991-
Kevin J. Barry, *Secretary-Treasurer*, 1991-2000
Philip D. Cave, *Secretary-Treasurer*, 2000-05, *Webmaster*, 2000-05
Hardy Vieux, *Secretary-Treasurer*, 2005-
Stephen A. Saltzburg, *General Counsel*, 1991-
Kathleen A. Duignan, *Executive Director*, 2005-
Jay Fidell, *Webmaster*, 2005-

DIRECTORS

Kevin J. Barry, 1991-
Philip D. Cave, 2000-
Mary M. Cheh, 1999-
Eugene R. Fidell, 1991-
Elizabeth L. Hillman, 2004-
John D. Hutson, 2004-
John S. Jenkins, 1999-2004
Ronald Meister 2005-
Michael F. Noone, 1999-2004
Stephen A. Saltzburg, 1991-
Dwight H. Sullivan, 1999-2002
Hardy Vieux, 2005-

BOARD OF ADVISORS

Diane Marie Amann, 2005-
Lawrence M. Baskir, 1991-94
David M. Brahms, 1991-
David O. Bright, 1999-2002
Mary M. Cheh, 1991-99
Guy Cournoyer, 2002-07
Miles P. Fischer, 2004-
Matthew S. Freedus, 2005-
Robert Kogod Goldman, 2004-
Elizabeth Lutes Hillman, 2000-04
Scott Horton, 2006-
John D. Hutson, 2003-04
John S. Jenkins, *Chairman*, 1991-99

Jeh Johnson, 2005-
J. Wayne Kastl, 1991-2004
Grant Lattin, 2001-03
Fredric I. Lederer, 1991-
Diane H. Mazur, 2000-
Ronald W. Meister, 1991-2005
Alexander S. Nicholas, 1991-
[on leave 1998-2000]
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Adele H. Odegard, 2003-
Diane F. Orentlicher, 2004-
Stephen J. Shapiro, 2002-
David A. Schleuter, 1991-2004
David P. Sheldon, 2000-04, 2005-
Edward F. Sherman, 1993-
Arnon D. Siegel, 2004-
Gary D. Solis, 2006-
Dwight H. Sullivan, 1997-99
Hardy Vieux, 2004-05
Mark L. Waple, 2005-
Donald N. Zillman, 1991-

Expiration of Advisors' Current Terms

Dec 2006

Miles P. Fischer
Bob Goldman
Diane Orentlicher

Dec 2007

Diane Marie Amann
Dave Brahms
Fred Lederer
Ed Sherman
Arnon Siegel
Hardy Vieux
Don Zillman
(Ron Meister, promoted to Dir.)

Dec 2008

Guy Cournoyer (resigned to accept judicial appointment)
Matthew S. Freedus
Diane H. Mazur
Alex S. Nicholas
Adele H. Odegard
Steve J. Shapiro
David P. Sheldon
Mark L. Waple

Dec 2009

Scott Horton
Gary D. Solis

**American University, Washington College of Law
National Institute of Military Justice
October 17, 2005 - March 31, 2007**

I. PERSONNEL	<u>NIMJ</u>	<u>AU</u>
A. Principal Investigator		
Herman Schwartz		
1. 10/17/05 - 5/31/06		
2% effort @	/AY	in-kind
2. 6/1/06 - 8/31/06		
2% effort @	/AY	in-kind
3. 9/1/06 - 3/31/07		
2% effort @	/AY	in-kind
B. Executive Director		
Katheen Duignan		
1. 10/17/05 - 8/31/06		
100% effort @	\$100,000 /FY	\$87,500
2. 9/1/06 - 3/31/07		
100% effort @	\$105,000 /FY	\$61,250
C. Research Fellow		
1. 10/15/05 - 8/31/06		
\$10 per hour x 20 hours week x 14 weeks x 3 semesters		\$8,400
2. 9/1/06 - 3/31/07		
\$10 per hour x 20 hours week x 14 weeks x 1.5 semesters		\$4,200
Subtotal Personnel	\$161,350	\$0
II. FRINGE BENEFITS		
25.5% of full-time salaries		
NIMJ Base:	\$148,750	\$37,931
8% of hourly salaries		
NIMJ Base	\$12,600	\$1,008
Subtotal Fringe Benefits	\$38,939	\$0

III. TRAVEL

A. Staff Travel			
\$153 (hotel per night x 3 nights x 5 trips)		\$2,295	
\$1,000 Air Fare (x 5 trips)		\$5,000	
B. Ground Transportation			
\$50 per trip x 5 trips		\$250	
	Subtotal Travel	\$7,545	\$0

IV. OTHER DIRECT COSTS

A. Telecommunications	\$50 month x 17.5 months	\$875	
B. Duplicating and Printing	\$50 month x 17.5 months	\$875	
C. Express Mail Delivery	\$50 month x 17.5 months	\$875	
D. Postage and Shipping	\$15 month x 17.5 months	\$263	
E. General Supplies	\$50 month x 17.5 months	\$875	
F. Food Service/Meals		\$3,565	
G. Parking	\$84 month x 17.5 months	\$1,461	
K. Office Rental Space			
171 sq. ft.			in-kind
55 sq. ft.			in-kind
	Subtotal Other Direct Costs	\$8,789	\$0

V. TOTAL DIRECT COSTS **\$216,623** **\$0****VI. INDIRECT COSTS**

13.10% MTDC			
NIMJ Base:	\$216,623	\$28,378	
	Subtotal Indirect Costs	\$28,378	\$0

VII. TOTAL PROJECT COSTS **\$245,001** **\$0**



AMERICAN UNIVERSITY

W A S H I N G T O N , D C

OFFICE OF THE CONTROLLER

Kathleen Duignan
National Institute of Military Army
4801 Massachusetts Avenue, NW
Washington, DC 20016-8181

Date : April 23, 2007
Contract # : N/A
A.U. Acct. : 11-286546-40307-34158
Period : 10/17/2005 - 03/31/2007

INTERIM FINANCIAL STATUS REPORT

ITEMIZED EXPENDITURES FROM OCTOBER 17, 2005 THRU MARCH 31, 2007

	Budget	Expenditures	Variance
Personnel	\$168,850.00	\$139,964.47	\$28,885.53
Fringe Benefits	38,939.00	34,743.74	4,195.26
Travel	7,545.00	11,838.37	-4,293.37
Other Direct Costs	8,788.00	28,451.58	-19,663.58
Indirect Costs	28,378.00	28,164.76	213.24
Total	\$252,500.00	\$243,162.92	\$9,337.08

I certify that all expenditures reported are for appropriate purposes and in accordance with the agreements set forth in the application and award documents

Esi Behbahani, Senior Accountant
(202) 885 2851

OFFICE OF FINANCE AND TREASURER

4400 MASSACHUSETTS AVENUE, NW WASHINGTON, DC 20016-8020 202-885-2840 FAX: 202-885-2839



4801 MASSACHUSETTS AVE., NW
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 (202) 274-4322
 www.nimj.org
 Kathleen A. Duignan
 Executive Director

BOARD OF DIRECTORS

2006 Expenses

Eugene R. Fidell President				
Hardy Vieux Secretary-Treasurer	34158		01/01/2006	05/01/2006
Prof. Stephen A. Saltzburg General Counsel			04/30/2006	12/31/2006
Captain Kevin J. Barry, USCG (Ret.) Director	Indirect cost	50650	9,489.66	11,746.70
Commander Philip D. Cave, JAGC, USN (Ret.) Director	Salary	51103	33,333.32	68,333.32
Prof. Mary M. Cheh Director	Student Wages	51203	240.00	3,474.50
Prof. Elizabeth L. Hillman Director	Consultant	51208		1,595.00
Rear Admiral John D. Hutson, JAGC, USN (Ret.) Director	Fringe Benefit	51513	10,625.00	15,193.74
Ronald W. Meister Director	Supplies	52101		130.38
	Contract	52108		1,904.00
	member/due	52117	70.00	684.35
	Food	52118		606.75
	Travel	52201	857.54	4,907.11
	Foreign Travel	52202	2,551.58	
	Non Employee Travel	52260		474.56
	Postage	52301	33.04	51.36
	Copy	52401	61.32	383.60
			<u>57,261.46</u>	<u>109,485.37</u>
				<u>166,746.83</u>

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 Prof. Fredric I. Lederer
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 NCANG (Ret.)
 Colonel Adele H. Odegard,
 JA, USA (Ret.)
 Prof. Diane F. Orentlicher
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