

UNCLASSIFIED//FOR PUBLIC RELEASE  
MILITARY COMMISSIONS TRIAL JUDICIARY  
GUANTANAMO BAY, CUBA

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UNITED STATES OF AMERICA

v.

KHALID SHAIKH MOHAMMAD,  
WALID MUHAMMAD SALIH  
MUBARAK BIN 'ATTASH,  
RAMZI BINALSHIBH,  
ALI ABDUL AZIZ ALI,  
MUSTAFA AHMED ADAM AL  
HAWSAWI

AE 380F

*AMENDED*  
TRIAL CONDUCT ORDER

20 OCTOBER 2015

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1. Attached is the amended proposed advice to the accused and the colloquy for *pro se* representation.
2. Review the attached and be prepared to respond to it on the hearing at 0900 on 21 October 2015.

So ORDERED this 20th day of October, 2015.

//s//  
JAMES L. POHL  
COL, JA, USA  
Military Judge

# Attachment 1

**GENERAL ADVICE TO THE ACCUSED**

You have the right to counsel; that is, you have a right to have a lawyer represent you in these proceedings and at your trial. You may waive your right to counsel and represent yourself, but only if you meet certain requirements.<sup>1</sup> In particular, if you want to represent yourself, you must make a request to do so that is (1) clear and unequivocal and not for purposes of delay or manipulation; (2) knowing, intelligent and voluntary; and (3) timely.<sup>2</sup>

First, if you want to represent yourself, you must say so clearly and unequivocally.<sup>3</sup> If you do not make it clear that you want to represent yourself, then you will be represented by a lawyer. There is, in other words, a presumption that you will be represented by a lawyer;<sup>4</sup> the only way to overcome that presumption is if you express your contrary desire clearly. Let me reiterate that absolutely critical point for you: If you want to represent yourself, you must say so clearly, explicitly, and without qualification or reservation. If you do not do that, then you will be represented by a lawyer, either retained or appointed.

Second, your request for self-representation must be knowing, intelligent and voluntary. In other words, before you decide what you want to do, you must understand the consequences of your decision. I want you to know what is at stake here. Although you need not be a lawyer, or have the skill and experience of a lawyer, in order to decide to represent yourself, you should be aware of the dangers and disadvantages of proceeding without one. You must know what you are doing and make your choice with your eyes open.<sup>5</sup>

I will now try to explain to you the difficulties and dangers of self-representation. If I say something that you do not understand, please let me know, and I will try to explain it again. It is vitally important that you understand the choice you are going to be making, and I will do everything I can to help you understand the choices.

You are facing very serious charges including: 1) Conspiracy, 2) Attacking Civilians, 3) Attacking Civilian Objects 4) Intentionally Causing Serious Bodily Injury 5) Murder in Violation of the Law of War, 6) Destruction of Property in Violation of the Law of War, 7) Hijacking an Aircraft, and 8) Terrorism.

These charges carry very severe penalties including the possibility, if you are convicted, of death. I will later go over the specific charges that you face in some detail, but at this point, I simply want to advise you that these charges are legally and factually complex.

Defending against these charges will require significant legal work, and require familiarity with the Military Commissions Act of 2009, the 2012 Manual for Military Commissions, to include the Rules for Military Commissions and the Military Commissions

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<sup>1</sup> 10 U.S.C. § 949a(2)(D).

<sup>2</sup> See *United States v. Frazier-El*, 204 F.3d 553, 558 (4th Cir. 2000), cert. denied. 531 U.S. 994, 121 S.Ct. 487 (2000).

<sup>3</sup> *Id.* at 558.

<sup>4</sup> See *United States v. Singleton*, 107 F.3d 1091, 1096 (4th Cir. 1997).

<sup>5</sup> *Id.* at 1098.

Rules of Evidence, the 2011 Regulation for Trial by Military Commission, and the 2014 Military Commissions Trial Judiciary Rules of Court. In the guilt phase of the trial, defending against these charges may require, for example, filing legal motions, such as motions to suppress evidence; questioning potential court members to ensure they will be fair and impartial in deciding your case; making objections during the course of the trial, such as an objection to hearsay or other inadmissible types of evidence; cross-examining witnesses called by the government to test their perception or memory of events, their motives or possible bias, and the truthfulness of their testimony; calling witnesses for the defense and eliciting from them evidence that is favorable to your case; moving tangible objects such as documents into evidence, which can be a technical process under the rules of evidence that govern in this Commission; writing legally precise member instructions that correctly state the law as it applies to the facts of your case, and that allow the members to consider possible legal defenses to the charges that the government is bringing against you; and making an opening statement and closing argument to the members that summarizes the evidence and argues, under the applicable law, for an acquittal.

If the members find you guilty of any of the charges, arriving at an appropriate sentence will require additional legal work, including the discovery and presentation of evidence in extenuation and mitigation of the offenses of conviction, and again, the preparation of legally precise member instructions regarding the application of the law of sentencing to this case, and making sentencing argument to the members that summarizes the evidence presented on sentencing and argues for what you believe would be an appropriate sentence.

All these things are usually better done by a lawyer than a lay person, because the lawyer is specially trained to do them and has special knowledge of, and experience with, the substantive and procedural rules of law and of this Commission. Obviously, there will be serious consequences if your defense is mishandled here. Moreover, because you are now held in detention, your lawyers will have better and easier access to witnesses who may be of help to you. And I must advise you that you do not have a legal right of access to a law library; legal materials would only be made available to you through standby counsel and the Court. Furthermore, because of the circumstances of your detention, you will not have unlimited access to legal research materials or to telephones. Nor will you have unlimited access to visitors, other than your counsel. You will also not be allowed to travel to any locations outside the detention facility or the courtroom to conduct the examination of any witnesses.

Also, as a general rule, you will not be given access to classified materials as you do not have the proper security clearance to review such items. However, you may have access to classified information under limited circumstances where I deem it necessary to ensure a fair trial and there are no adequate unclassified substitutes.<sup>6</sup> Nor will you be given access to other sensitive documents I find the disclosure of which would jeopardize public safety. You are advised that there may be a substantial amount of classified or sensitive material relating to your case, some of which may be relevant and material to your preparation of a defense to the charges alleged against you. Your inability to have access to this material may significantly hinder your efforts to represent yourself. However, as I will discuss in greater detail in a few minutes, I will direct that both your Learned Counsel and your detailed military defense counsel remain on your

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<sup>6</sup> See *United States v. Moussaoui*, 591 F.3d 263 (4<sup>th</sup> Cir. 2010).

case as what is known as “standby counsel,” because they have the necessary security clearances to review classified materials. These counsel may then make any legal motions regarding the classified materials, subject to your approval. In addition, standby counsel will continue to prepare for the case in the event the full representation role is transferred to the defense at some point during these proceedings.<sup>7</sup>

It is almost always a good idea for an accused in a criminal case to have a lawyer. I do not, however, want you to take these warnings or anything else I am saying as any kind of veiled threat, or as a suggestion that I will be disposed against you if you decide to represent yourself. The choice is entirely yours, so long as you make it in a knowing, intelligent and voluntary fashion, with a proper understanding of what is at stake. I am only trying to ensure that you make an informed decision.

Third and finally, timeliness:<sup>8</sup> If you make your choice today, it will be timely, because it will not require us to reschedule the trial. But I warn you, for the future, that you do not have a right to manipulate this Court. You should think hard before making a decision today, because it will have ongoing significance for you. If you choose today to have a lawyer, and then later ask to represent yourself, and if I conclude that you are acting in bad faith and trying to delay the trial, I may deny your request. This is an important moment in the case, and we are holding this hearing because you have an important decision to make. You should make a thoughtful and considered choice that you can live with until the trial is over.

If you decide to represent yourself, I will appoint your Learned Counsel and your detailed military counsel as what is called “standby” counsel to assist you. You will still largely control the presentation of your case, but you will have standby counsel to explain to you the details of courtroom protocol and the rules of evidence and procedure. The standby counsel will be there to help you during the pretrial stage to investigate the facts and the law, to identify possible defenses, and suggest appropriate motions to file. During pretrial sessions and sessions outside the presence of members, your standby counsel may address the Commission with your permission and the permission of the Commission. During the trial, standby counsel will be there to provide help in introducing evidence and objecting to testimony, and will be available to take over if I find that for some reason you have lost your right to self-representation. During the sentencing phase if you are found guilty of any offense, standby counsel will assist you in presenting mitigating evidence. Standby counsel are there to assist, but will not be permitted to interfere with your control of the case, with a few exceptions I will discuss shortly.

You do not have a right to reject standby counsel, and as I say, I have decided to appoint standby counsel for you if you decide to proceed *pro se*.<sup>9</sup> So, if you represent yourself, you will have standby counsel.

However, even with standby counsel, you will still largely control the presentation of your case to the members. For example, you will have a right to control the organization and

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<sup>7</sup> See CRIMINAL JUSTICE STANDARDS: DEFENSE FUNCTION (4th Ed. 2014)).

<sup>8</sup> See *Frazier-El*, 204 F.3d at 556 (citing *United States v. Lawrence*, 605 F.2d 1321, 1324-1325 n.2 (4th Cir. 1979)).

<sup>9</sup> See *McKaskle v. Wiggins*, 465 U.S. 168, 184 (1984); *Faretta v. California*, 422 U.S. 806, 835 n.46 (1975).

content of your own defense, to make motions, to argue points of law, to participate in voir dire of court members, to question most witnesses, and to address the Commission and the members at appropriate points in the trial. Standby counsel may not interfere with your control of the case or your appearance of control before the members. Standby counsel may express disagreement with your decisions, but must do so outside the members' presence. You ultimately retain final authority over the case.<sup>10</sup> Of course, you will have to do all of these things within the limits set by the rules of courtroom procedure, evidence, and decorum.<sup>11</sup> For example, I may decide that you will not learn other personal identifying information, such as the addresses or true names, of the government's witnesses.

As a general rule standby counsel will not address the members without your permission and the permission of the Commission. This is not to say, however, that standby counsel is prohibited from acting at all in front of the members. Standby counsel may assist you in overcoming routine procedural or evidentiary obstacles, such as introducing evidence or objecting to testimony, and may help to ensure your compliance with basic rules of courtroom protocol and procedure.<sup>12</sup> Also, if I find that there are reasons why you should not be allowed to cross-examine certain witnesses, because of particular sensitivities on their part, then I will direct standby counsel, with your input, to conduct the cross-examination of such witnesses. Similarly, I may direct standby counsel to conduct the examination, again with your input, of a witness who must be questioned from a location outside the immediate area or even outside the country, because you will not be allowed to partake in any travel outside of the facility in which you are detained or this courtroom.

To sum up, then, you have a right to be represented by a Learned Counsel and detailed military counsel and you have a right to represent yourself. You do not, however, have a right to "hybrid" representation, where you and a lawyer act as co-counsel in the conduct of your defense.<sup>13</sup>

If you do not waive your right to counsel and you are represented by a lawyer, then the lawyer will conduct your defense: you will not be permitted to examine witnesses, offer evidence, address me or the members directly, participate in conferences here at the bench, or perform any of the attorney's "core functions" in the courtroom. You will, of course, be permitted to remain in the courtroom during your trial - provided as always that you maintain proper decorum. And I would encourage you to work behind the scenes with your attorneys, to help them represent you as well as possible. But if you are represented by a lawyer, you will not function as an advocate in the trial. Your only public speaking role would arise if you decided to testify, in which case you would answer the specific questions posed by your lawyers and by the attorneys for the government. To repeat: If you are represented by lawyers, then it is the lawyers, and not you, who will conduct the defense.

Correspondingly, if you represent yourself, you will be able to perform the lawyer's core functions, but you will not necessarily be allowed to direct special appearances by counsel when

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<sup>10</sup> *Id.* at 178.

<sup>11</sup> *Id.* at 173

<sup>12</sup> *Id.* at 183.

<sup>13</sup> *Id.* at 183; *Singleton*, 107 F.3d at 1100-03.

it is convenient for you.<sup>14</sup> Standby counsel will be available to help you overcome routine procedural or evidentiary obstacles, and matters of courtroom protocol, again without undermining your actual control over the presentation of your defense.<sup>15</sup> But if you elect to place standby counsel before the members in an active role, or if you do not object when that happens, you could lose your right to represent yourself. At a minimum, if you do that, any further participation by the lawyer will be presumed to be with your permission, and you will not be able to complain about it later.<sup>16</sup>

If you represent yourself, I am not going to treat you any differently than any other Accused,<sup>17</sup> and the court of appeals is not going to treat your case any differently.<sup>18</sup> If you make the decision to represent yourself and you make mistakes, you are not going to be able to come back and complain about those mistakes. You will have accepted responsibility for them.

There are some other things you should know. If you do choose to represent yourself, you must understand that it does not give you a license to abuse the dignity of the courtroom, or a license to violate the relevant rules of procedural and substantive law. You must always abide by courtroom protocol and maintain proper decorum, and you may not improperly disrupt the proceedings. You must, for example, follow the rules of evidence. You must obey my rulings even if you disagree with them, knowing that you have preserved your objection for review by the appellate court. If you deliberately engage in serious and obstructionist misconduct, I will terminate your self-representation<sup>19</sup> and I may also impose physical restraints on you, or remove you entirely from the courtroom during the trial, until you commit to conducting yourself in a manner consistent with the dignity of these court proceedings.<sup>20</sup> If I am forced to do so, then standby counsel will take over the defense for you.<sup>21</sup> Also, you should know that I may decide to permit the Court Security Personnel to adopt certain security procedures to protect the dignity and safety of this courtroom. These procedures may involve certain physical restraints. Of course, I would only approve of such procedures after having a hearing at which you and your counsel may be present and after satisfying myself that any restraints imposed on you would not jeopardize your right to a fair trial.

Further, up until now you have had the right to absent yourself from certain proceedings. That will no longer be permitted – you must come to every session of the Commission and, if you fail to attend, I will end your ability to represent yourself and require you standby counsel to resume representing you.

This case, which could result in your death, is in a very, very serious posture from your standpoint. The rules and the procedures are complicated, and therefore, I want to make sure that you have very carefully thought through your position about representing yourself, and that you have discussed it with appointed counsel. If you have any questions, I will be happy to answer

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<sup>14</sup> See *McKaskle*, 465 U.S. at 183.

<sup>15</sup> *Id.* at 183.

<sup>16</sup> *Id.* at 183.

<sup>17</sup> *Id.* at 183-84; 10 U.S.C. § 949a(4)(A).

<sup>18</sup> *Id.* at 46

<sup>19</sup> 10 U.S.C. § 949a(4)(B).

<sup>20</sup> 10 U.S.C. § 949a(b)(2)(B)

<sup>21</sup> See *Faretta*, 422 U.S. at 834 n.46.

them at this time.

In a moment, I will ask you questions so that I can learn a little more about your background, education, job experience, knowledge of English and familiarity with the American legal system to determine whether your decision today is made knowingly and voluntarily. I will also inquire about any recent or regular use of prescription medications to assure myself that your judgment today is not clouded. After I complete my questions, I will give you time to think about your decision and consult with your counsel if you wish. I will then hear your decision and make my own determination and findings about whether you have knowingly, intelligently, voluntarily and unequivocally waived your right to counsel.

## **Attachment 2**

**PRO SE  
US V BIN 'ATTASH**

**MJ:** Mr. bin 'Attash, I'm now going to explain to you the rights and procedures if you decide to represent yourself.

You are facing very serious charges including: 1) Conspiracy, 2) Attacking Civilians, 3) Attacking Civilian Objects 4) Intentionally Causing Serious Bodily Injury 5) Murder in Violation of the Law of War, 6) Destruction of Property in Violation of the Law of War, 7) Hijacking an Aircraft, and 8) Terrorism. These charges carry very severe penalties including the possibility, if you are convicted, of death.

Defending against these charges will require significant legal work, and require familiarity with the Military Commissions Act of 2009, the 2012 Manual for Military Commissions, the Rules for Military Commissions, and the Military Commissions Rules of Evidence.

Do you understand that?

**ACC**

**MJ:** Mr. bin 'Attash pursuant to the Manual for Military Commissions, you are represented at this time by Ms. Bormann, who is your Learned Counsel, and by Major Schwartz who is your detailed defense counsel.

Both Learned Counsel and detailed defense counsel are provided to you free of charge. If you wanted someone else as your detailed counsel, and if the person you request is reasonably available, he or she would be appointed to represent you as your detailed defense counsel.

If you are represented by detailed military defense counsel of your own selection, you would normally lose the services of Major Schwartz. You may however, request that he continue to represent you along with your Learned Counsel as well as other detailed defense counsel that would be appointed to defend

you.

If you did that, the Chief Defense Counsel would have the discretion whether to leave Major Schwartz on the case or whether they would not stay on the case.

Do you understand that?

**ACC**

**MJ:** In addition to the Learned Counsel and your detailed defense counsel, you may also request to be represented by another qualified civilian defense counsel. A civilian lawyer would represent you at no expense to the United States Government.

To be qualified under the rules that govern this process, the civilian lawyer must be a United States citizen, admitted to the practice of law in a state or a district or territory or possession of the United States or a United States federal court. And that person may not have been the subject of a disqualification action by a bar that governs the conduct of attorneys or other competent authority.

These attorneys must also be eligible for a Top Secret/SCI clearance as required and agree in writing to comply with the rules, orders, and regulations of the commissions. If one of the attorneys is qualified as a Learned Counsel, and so long as there are 2 attorneys, these civilian lawyers may represent you alone; that is, without the Learned Counsel and detailed military attorneys that have been previously appointed, or they can represent you along with the detailed military attorney that has been appointed.

If a civilian lawyer represents you, the military lawyer will continue to represent you unless you specifically waive the right and ask that the military lawyer not continue on the case.

Do you understand that?

**ACC**

**MJ:** Do you have any questions about the rights that I have just explained to you?

**ACC**

**MJ:** Now, I want to specifically address what it means for you to represent yourself.

I want to explain to you why it is a good idea to be represented by lawyers. And at the end, if it's your choice not to be represented by them, it's not going to be forced on you.

I need to make sure you understand why most people, to include myself, think it would be a good idea for you to have the assistance of counsel. And then it's your choice at the end of the discussion.

In order to represent someone before a Military Commission, the person has to be a qualified attorney. For the purposes of this Commission, it means that the person has to be admitted to practice law before the highest Court in a state or a territory as I've described earlier.

The law requires that, since this is a capital case, at least one of the counsel representing you have special training and experience in defending Accused who, if found guilty, could be sentenced to death. In this instance that would be Ms. Bormann

The law also requires that you be provided with a detailed military counsel. A detailed military counsel has to be nominated; that is, chosen from other military lawyers within their service for service before the Military Commission. So that means they have to be picked and screened as far as having the proper qualifications. Major Schwarz had been detailed as a defense counsel for you.

Do you understand that?

**ACC**

**MJ:** Also both Learned Counsel and detailed defense counsel have the appropriate security clearances to represent you before the Commission so they can see all the materials, all the potential evidence in the case.

Do you understand that?

**ACC**

**MJ:** In order to become an attorney, those persons need to have graduated both from a college or university and also from a law school which is training after college. The detailed military defense counsel also receives special training in military law, both on a basic, introductory level, and on an advanced level.

From the time the person becomes a military lawyer, they are referred to as a judge advocate, that's another term for a military lawyer. And at that time the person becomes familiar with military terms, military units, military practices, and with all the procedures that are associated with trying a case in a military court such as this.

With some relatively minor variation, the procedures and rules that govern these commissions are the same as those that govern military practice that these lawyers have been engaged in prior to being here.

Do you understand that?

**ACC**

**MJ:** Along with becoming familiar with the military terminology and the military aspects that might be associated with the evidence in this case, the lawyers

involved, both military and civilian, based on their training and experience are naturally going to be more familiar with legal concepts and legal terminology that will necessarily be used during the course of this trial.

Do you understand that?

**ACC**

**MJ:** Along with the military lawyers' familiarity or experience with military terms and military practices, the military lawyers and the civilian lawyers all have more familiarity with the legal terms and the legal concepts than you would have based on their training and experience.

Do you understand that?

**ACC**

**MJ:**

That's not to say that they're any smarter or anything. It's just that their experience and training puts them in a position to understand what's going on here arguably better than you.

Do you understand that?

**ACC**

**MJ:** Now, another thing you need to consider is that professional lawyers are not personally involved in this case like you are; therefore, they can have an objective view of the proceedings. There is a classic saying in jurisprudence or in discussions having to do with the law that a person that represents themselves has a fool for a client.

And that is not meant to be insulting to the individual but rather saying that even if

you were a highly skilled, trained lawyer, it would be a bad idea for you to represent yourself because you wouldn't have as clear a view of the evidence and all the things that are going on. I think similar comments are made about doctors, a doctor shouldn't treat themselves or members of their family.

It's just a bad idea for a person to be personally involved in representation of themselves. And it would be at a minimum best for you to keep one or more or all of these lawyers on the case to assist you and advise you.

Do you understand that?

**ACC**

**MJ:** Given their background and training and knowledge, these lawyers that are appointed for you or some others that you might pick have the knowledge and technical skill to seek to force this Commission and ensure this Commission applies rules properly on your behalf.

They can make objections based on their training and experience; they can talk about other cases that have been decided in the law that show how myself or other judge should follow the rules of the other courts. And these are things that they can make arguments and put them together that you as a nonlawyer may not have the ability to do. Again, not because you're not smart enough, just because you don't have the training and experience to do so.

Do you understand that?

**ACC**

**MJ:** Furthermore, to state the obvious, you are detained when you are not with us in the courtroom here today. These lawyers are not. So they have access to computers to do research and to put together motions, to communicate with other

lawyers that maybe help them think of a way to prepare a defense on your behalf. They can use telephones or travel to different places to interview witnesses. Even if you represent yourself, with the exception of the laptop computer I have ordered returned to you, you will not be able to do any of those things.

Do you understand that?

**ACC**

**MJ:** These lawyers also have storage facilities for the matters that will be presented. And they will have easier access to look at things that will be necessary to develop a defense for you in this case.

Do you understand that?

**ACC**

**MJ:** In addition, as a general rule, you will not be allowed to review classified evidence provided prior to trial. This could hinder your ability to prepare for trial. Your counsel will still have access to classified evidence but would be prohibited from sharing classified evidence with you unless disclosure to you is specifically authorized by the Commission.

Do you understand that?

**ACC**

**MJ:** You also need to understand that once you go pro se, which means to represent yourself. If you represent yourself, the rules that govern this process will not be changed for you to represent yourself as a nonlawyer.

You will have to follow all the rules that the lawyers would have to follow

as far as filing of motions, responding to motions that the government might make, asking questions in the proper form, making the right form of objections.

**ACC**

**MJ:** You will have to follow all the rules that the lawyers would have to follow as far as filing of motions, responding to motions that the government might make, asking questions in the proper form, making the right form of objections.

And if you're not able to do that, and I suggest to you that it would be very difficult for you to do that without the training and experience that they have, you may ultimately be very frustrated in your ability to put forward your own defense.

And while it would not be the wish of this Court to frustrate your ability to do that, my application of the rules or any other judge that's involved in the case might put you in a position where you're not able to get your message across.

Do you understand that?

**ACC**

**MJ:** Do you understand when you are acting as your own attorney, you cannot be making speeches and trying to testify? Do you understand that?

**ACC**

**MJ:** And whenever you speak, you are creating a permanent record which the United States may use in its prosecution or further investigation of this case. Any attorney would advise you not to volunteer information, and you may make it impossible for any lawyer or for yourself down the road to mount an adequate defense if you commit to statements on the record. Do you understand that?

**ACC**

**MJ:** Do you understand that in questioning any witnesses, either in direct or cross examination, the questioning must at all times be appropriate. Do you understand that?

**ACC**

**MJ:** You need to also understand that your status as a detainee and being confined will not play any role in the decision that the Commission makes as far as any issues that might arise in this case.

Do you understand that?

**ACC**

**MJ:** Before today you have been permitted to miss some of the sessions of the Commission by waiving your right to be here. If you represent yourself you must be present, just like all the attorneys, at all sessions of the Commission. If you change your mind and decide you no longer wish to represent yourself, you must come into Court and tell me.

Do you understand this?

**ACC**

**MJ:** I have explained to you how one becomes qualified to be an attorney and that only a qualified attorney may represent you before these Commissions. The Military Commission's rules also state that you may be represented by the attorneys that are seated with you or some other one you select or that you may elect not to invoke your right to counsel; that is, choose not to take advantage of the counsel that are available and represent yourself.

Do you understand?

**ACC**

**MJ:** You need to also understand that your status as a detainee and being confined will not play any role in the decision that the Commission makes as far as any issues that might arise in this case.

Do you understand that?

**ACC**

**MJ:** Before today you have been permitted to miss some of the sessions of the Commission by waiving your right to be here. If you represent yourself you must be present, just like all the attorneys, at all sessions of the Commission. If you change your mind and decide you no longer wish to represent yourself, you must come into Court and tell me.

Do you understand this?

**ACC**

**MJ:** Mr. bin 'Attash how old are you?

**ACC**

**MJ:** What formal education have you had? Where/when did you have it?

**ACC**

**MJ:** What is your native language?

**ACC**

**MJ:** What is your fluency level in English?

**ACC**

**MJ:** Where/how did you learn English

**ACC**

**MJ:** How long have you spoken English?

**ACC**

**MJ:** Have you had any work experience with English as the primary language?

**ACC**

**MJ:** Have you ever had any formal training in the law?

**ACC**

**MJ:** Have you ever studied any U.S. or military law?

**ACC**

**MJ:** Have you ever previously been a party or witness in a U.S. legal proceeding?

**ACC**

**MJ:** Have you ever represented yourself or another in any U.S. legal proceeding?

**ACC**

**MJ:** Do you have any familiarity at all with American legal terms?

**ACC**

**MJ:** Do you have any familiarity with American military terms?

**ACC**

**MJ:** Have you read any of the laws or procedures that govern these proceedings?

**ACC**

**MJ:** What is your Familiarity with the Military Commission Act of 2009, the Rules for Military Commissions and Military Commissions Rules of Evidence?

**ACC**

**MJ:** Are you aware that the U.S. is a common law system with very little in common with Islamic law?

**ACC**

**MJ:** Are you aware that U.S. system relies heavily on live witness testimony before members and to a limited degree on written witness statements?

**ACC**

**MJ:** Are you aware of the law that governs use of classified materials and conducting closed sessions?

**ACC**

**MJ:** Please describe your current Physical health?

**ACC**

**MJ:** Are you currently taking any medications?

**ACC**

**MJ:** Has anyone told you to represent yourself?

**ACC**

**MJ:** Have you been made any promises by anyone in order to represent yourself?

**ACC**

**MJ:** Is your request to represent yourself a decision by you and made of your own free will?

**ACC**

**MJ:** Do you understand the nature of the charges against you?

**ACC**

**MJ:** Do you understand that the maximum sentence in your case is death?

**ACC**

**MJ:** Do understand there are special laws and rules that apply to death penalty cases?

**ACC**

**MJ:** Are you aware of these special laws and rules that apply to death penalty cases?

**ACC**

**MJ:** Have you received any training on these special laws and rules?

**ACC**

**MJ:** Have you talked with your Learned Counsel and you detailed defense counsel about your desire to represent yourself in these proceedings?

**ACC**

**MJ:** Have they told you that it's not a good idea?

**ACC**

**MJ:** Do you understand everything that I've gone' over so far?

**ACC**

**MJ:** I want to repeat to you again that it's --I think it is unwise despite your purpose for doing so. And I understand your purpose for doing so. But despite that I think it is unwise for you to do so and I strongly urge you to reconsider your decision with regard to representing yourself.

Do you understand that?

**ACC**

**MJ:** Mr. bin 'Attash if you elect to represent yourself in these proceedings, then I am going to direct Ms. Bormann, your Learned Counsel and Major Schwartz, your detailed defense counsel, to carry on as standby counsel for you.

They would remain as your standby counsel in an advisory capacity throughout the trial. They may provide you with advice and procedural instructions. The counsel will not do anything without your agreement. However, they will be available to assist you. And it is my hope that you will elect to have them represent you as counsel. But if not, that is your choice.

If during the trial you feel like you could benefit from their advice, please just ask me for a moment to speak with them during the trial.

Do you understand that?

**ACC**

**MJ:** I'll reiterate again, it is a good idea for them to represent you. But ultimately the counsel election is entirely the choice of these accused. Do you have any questions?

**ACC**

**MJ:** I will now give you time to discuss this issue with your attorneys. Do you have any questions of me at this time? I will give you an opportunity to ask me questions after you talk to your attorneys.

**ACC**