

**MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY**

UNITED STATES OF AMERICA

v.

ABD AL-RAHIM HUSSEIN MUHAMMED
ABDU AL-NASHIRI

AE 140C

**DEFENSE MOTION TO COMPEL THE
PRODUCTION OF DR. VINCENT
IACOPINO TO TESTIFY ON AE 140**

**GOVERNMENT MOTION FOR INQUIRY
INTO THE MENTAL CAPACITY OF THE
ACCUSED UNDER R.M.C. 706**

January 14, 2013

1. **Timeliness:** This request is filed within the timeframe established by Rule for Military Commission (R.M.C.) 905.
2. **Relief Requested:** The defense respectfully requests that the Commission compel the production of Dr. Vincent Iacopino to testify for the Defense on behalf of AE 140.
3. **Overview:** The defense respectfully requests that the Commission order that the Convening Authority fund the testimony of Dr. Vincent Iacopino, the leading expert in the evaluation of torture victims. Dr. Iacopino's testimony is relevant and necessary to demonstrate to the Commission the specific needs for particular safeguards if the Commission were to order a R.M.C. 706 evaluation. Failure to grant this motion violates the defendant's rights guaranteed by the Fifth, Sixth and Eighth Amendments to the Constitution of the United States of America, the Military Commission Act of 2009, the Detainee Treatment Act, treaty obligations of the United States and fundamental fairness.
4. **Burden of Proof and Persuasion:** As the moving party, the defense bears the burden of persuasion as to any factual issues relevant to the disposition of this motion, which it must demonstrate by a preponderance of the evidence. R.M.C. 905(c).

5. Facts:

- a. On 16 November 2012, the prosecution filed a motion for a competency evaluation of the accused under R.M.C. 706. *See* AE 140
- b. On 28 December 2012, the defense submitted its response. In its response the defense listed Dr. Vince Iacopino as its witness in support of the motion. *See* AE 140A. The defense did not list Dr. Rosenfeld as its witness. *Id.*
- c. On that same day, the defense submitted a request to the convening authority (CA) for the funding of Dr. Iacopino to testify by video teleconference (VTC) at the hearing on the government's R.M.C. 706 motion. Dr. Iacopino is the author of the Istanbul Protocol and the leading expert on the examination of victims of torture. As such, the defense provided the following justification for Dr. Iacopino's testimony:

Dr. Iacopino is the world renowned expert on the proper methods of examining an individual who has been subjected to torture. He is the Senior Medical Advisor for Physicians for Human Rights. And as such is one of the most knowledgeable persons in the world on the proper methods to examine an individual who has been subjected to torture.¹ Moreover, Dr. Iacopino is one of the authors of the Istanbul Protocols on the investigation and documentation of torture and therefore has the background, experience, and knowledge to testify about the need for any examination of a torture victim to abide by the Istanbul Protocol, and the medical reasons behind such a need. Further, Dr. Iacopino will testify about the importance that evaluators of torture victims have access to the full record of the torture to which the victim was subjected to *and* to the full complete un-redacted medical and psychological records of the victim. Finally, Dr. Iacopino will testify that in conducting any type of examination of a torture victim there is a need for specific limitations and requirements in those examinations and the failure to follow those limitations will impact the validity of any R.M.C. 706 evaluation.

(Attachment A).

- d. Prior to filing Dr. Iacopino's request, the defense filed a different request for Dr. Barry Rosenfeld to testify on behalf of another motion—defense's motion to cease the use of

¹ The defense suggests that should the Convening Authority deny this request it is due to the desire of the Convening Authority to minimize discussions of the torture to which the defendant was subjected by the United States. Denial will also demonstrate the Convening Authority's lack of neutrality.

belly chains (AE 118). The defense requested funding for Dr. Rosenfeld primarily to “demonstrate why the continued use of unnecessary belly chains re-traumatizes Mr. Al-Nashiri and the resulting effects of that re-traumatization.” (Attachment B). As a secondary purpose for his testimony, the defense stated that “Dr. Rosenfeld will testify about the need for the requested limitations [on any R.M.C. 706 evaluation] and the impact that the failure to impose such limitations will have on the validity of any 706 evaluation.” *Id.*

e. On 9 January 2013, the CA denied the defense’s request for Dr. Iacopina stating that “Dr. Iacopino’s testimony would be cumulative with the testimony of Dr. Rosenfeld.” (Attachment C).

6. Argument: Under 10 U.S.C. § 949j, the accused’s “opportunity to obtain witnesses and evidence shall be comparable to the opportunity available to a criminal defendant in an [Article III court].” Also, under R.M.C. 701(j), “[e]ach party shall have adequate opportunity to prepare its case and no party may unreasonably impede access of another party to a witness or evidence.”

Dr. Iacopino is the world renowned expert on the proper methods of examining an individual who has been subjected to torture. He is the Senior Medical Advisor for Physicians for Human Rights and is one of the principal authors behind the Istanbul Protocol, the definitive guidelines on examining a torture victim. As such, Dr. Iacopino is arguably the most knowledgeable person in the world on the proper methods to examine an individual who has been subjected to torture.

The prosecution filed a motion for a competency evaluation. In response, the defense objected to such an evaluation, but also argued that if the judge ordered an evaluation that the evaluation must contain specific procedures and safeguards since it will involve a torture victim. The defense listed Dr. Iacopino as the witness to testify in support of its position. Namely, as the leading expert and one of the authors of the Istanbul Protocol, Dr. Iacopino will testify by VTC

as to why a competency evaluation must follow certain procedures and that failure to follow them will have deleterious effects on the examiner, and will eventually undermine the reliability of the evaluation.

The CA denied the defense's funding request because he viewed it to be cumulative to Dr. Rosenfeld. Clearly, the CA found that the subject of Dr. Iacopino's testimony was relevant and necessary; otherwise the CA would have denied the request on relevancy grounds. So the issue here is about what witness the defense is allowed to call in support of its motion.

Of course a determination of what witness to call in support of a particular motion is a core duty of defense counsel. *See United States v. Burroughs*, 613 F.3d 233, 239 (D.C. Cir. 2010)(in deciding whether to approved resources, the judge looks to see if a "reasonable attorney" would engage such services for a client having independent financial means to pay for them). Although Dr. Rosenfeld is well qualified to conduct evaluations of torture victims it is in the defense's professional judgment that Dr. Iacopino is the most appropriate and strongest witness in support of the motion—that is why the defense placed Dr. Iacopino in the witness section of its responsive pleading. *See Polk County v. Dodson*, 454 U.S. 312, 321 (1981)("a public defender works under canons of professional responsibility that mandates his exercise of independent judgment on behalf of the client.") The Convening Authority should not be empowered to choose which witness or witnesses the defense can call. *Id.* at 322 ("Implicit in the concept of a 'guiding hand' is the assumption that counsel will be free of state control. There can be no fair trial unless the accused receives the services of an effective and independent advocate."); *see also* AE 117 (Defense motion for a neutral convening authority).²

² This Convening Authority has repeatedly sought to interfere with core defense functions, his interference is making it difficult for counsel to prepare for trial and undermining Mr. Al-Nashiri's right to effective assistance of counsel. The Convening Authority is also slowing down the process—he has denied resources for timely translations, refused experts that he acknowledges are necessary because the defense will not provide information to the prosecution, and has interfered with overseas investigations.

Further, the need for Dr. Iacopino's testimony was created by the government's request to a R.M.C. 706 evaluation and its objections to any of the defense's proposed limitations to such an examination. Thusly, the defense desires Dr. Iacopino's testimony in order to present the strongest and most effective evidence against the government's motion. Any future order by the military judge authorizing a competency evaluation will involve serious and weighty consequences for the defense, and for the development of this case—especially in light of the accused's status as a torture victim. Accordingly, the defense has strong and legitimate reasons for ensuring that it makes the best possible case in support of its position.

Moreover, if the Commission orders the competency evaluation then that competency board is acting at the Commission's behest; therefore, the Commission has a significant interest in ensuring that his board is done appropriately and in a manner that will not disrupt the case. Thus, the Commission also has a strong interest in hearing from Dr. Iacopino.

Denial of this motion will be a violation of the accused's rights under the Military Commissions Act, the Detainee Treatment Act and the Fifth, Sixth and Eighth Amendments to the Constitution numerous treaty obligations of the United States, and fundamental fairness.

7. **Oral Argument:** The Defense requests oral argument in connection with this motion.
8. **Witnesses:** Dr. Vincent Iacopino.
9. **Conference with Opposing Counsel:** The government objects to this motion.
10. **List of Attachments:**
 - A. Defense Request for Dr. Vincent Iacopino, dtd 28 Dec 12.
 - B. Defense Request for Dr. Barry Rosenfeld, dtd 19 Dec 12.
 - C. Convening Authority's Response to Defense's Request for Dr. Iacopino, dtd 9 Jan 13.

/s/ Richard Kammen
 RICHARD KAMMEN
DOD Appointed Learned Counsel

/s/ Stephen C. Reyes
STEPHEN C. REYES
LCDR, JAGC, USN
Detailed Defense Counsel

/s/ Allison C. Danels
ALLISON C. DANELS, Maj, USAF
Assistant Detailed Defense Counsel

CERTIFICATE OF SERVICE

I certify that on 14 January 2013, I electronically filed the forgoing document with the Trial Judiciary and served it on all counsel of record by e-mail.

//s//

STEPHEN C. REYES
Lieutenant Commander
JAGC, US Navy
Detailed Defense Counsel

ATTACHMENT

A



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Richard Gilroy
Of Counsel

December 28, 2012

28 DEC 2012

MEMORANDUM FOR THE CONVENING AUTHORITY¹

SUBJ: DEFENSE'S REQUEST FOR FUNDING OF DR. VINCENT IACOPINO TO TESTIFY AS AN EXPERT WITNESS BEFORE THE MILITARY COMMISSION SESSION OF 15-17 JANUARY ICO *UNITED STATES v. AL-NASHIRI*.

Ref: (a) R.M.C. 703(d).

Encl: (1) C.V. Vincent Iacopino

1. The defense respectfully requests funding for Dr. Vincent Iacopino as an expert witness to testify by VTC from a location near his home in Henderson Nevada, on behalf of the accused at a hearing to be held in Guantanamo during the next court session on 15-18 January 2012.

2. Reasons for Testimony. At the January hearing, the defense will be arguing against the prosecution's request for an evaluation of the accused under R.M.C. 706. In its response, the defense has asserted objections and proposed limitations to any R.M.C. 706 evaluation that the Commission might order. Dr. Iacopino is the world renowned expert on the proper methods of examining an individual who has been subjected to torture. He is the Senior Medical Advisor for Physicians for Human Rights. And as such is one of the most knowledgeable persons in the world on the proper methods to examine an individual who has been subjected to torture.²

¹ This memorandum is being served upon the prosecution. This requirement violates the defendant's rights guaranteed by the Military Commissions Act, the Detainee Treatment Act, and the Fifth, Sixth and Eighth Amendments to the Constitution of the United States of America. The accused does not waive this issue upon review.

² The defense suggests that should the Convening Authority deny this request it is due to the desire of the Convening Authority to minimize discussions of the torture to which the defendant was subjected by the United States. Denial will also demonstrate the Convening Authority's lack of neutrality.

Moreover, Dr. Iacopino is one of the authors of the Istanbul Protocols on the investigation and documentation of torture and therefore has the background, experience, and knowledge to testify about the need for any examination of a torture victim to abide by the Istanbul Protocol, and the medical reasons behind such a need. Further, Dr. Iacopino will testify about the importance that evaluators of torture victims have access to the full record of the torture to which the victim was subjected to *and* to the full complete un-redacted medical and psychological records of the victim. Finally, Dr. Iacopino will testify that in conducting any type of examination of a torture victim there is a need for specific limitations and requirements in those examinations and the failure to follow those limitations will impact the validity of any R.M.C. 706 evaluation. Accordingly, Dr. Iacopino's testimony is germane to the defense's response to the government's motion.

4. Estimated Cost.

a. Total hours/days and total cost: Inasmuch as Dr. Iacopino is not available to travel to Guantanamo the cost to the government is minimal. The defense would request, however, 5 hours of Dr. Iacopino's time for preparation of his testimony, 2 hours for any governmental interviews should Dr. Iacopino be willing to discuss his testimony with the prosecution and approximately 5 hours for Dr. Iacopino's testimony.

b. Dr. Iacopino requests payment in the amount of \$300.00 per hour and the total of 12 hours is \$3,600.00.

5. Conclusion. For all the forgoing reasons the defense requests permission to employ Dr. Vincent Iacopino to testify in behalf of the accused in support of a motion concerning in response to the government's motion for a competency evaluation under R.M.C. 706. Failure to grant this request will violate the accused's rights guaranteed by the Fifth, Sixth and Eighth Amendments to the Constitution of the United States of America as well as Rule 703 of the Rules for Military Commissions.

Very Truly Yours

/s/ Richard Kammen

Civilian Learned Counsel

CURRICULUM VITAE
Vincent Iacopino, M.D., Ph.D.

Physicians for Human Rights
Senior Medical Advisor

Adjunct Professor of Medicine
University of Minnesota School of Medicine

Senior Research Fellow
Human Rights Center
University of California, Berkeley

Education:

Villanova University
B.S., Biology, 1979

Georgetown University
M.S., Physiology, 1980

Georgetown University
Ph.D., Physiology, 1985

Georgetown University School of Medicine
M.D., 1985

University of Minnesota Hospitals and Clinics
Internship and Residency, Internal Medicine, July,
1985 to June, 1986 and April, 1987 to April, 1989

V.A. Medical Center, Minneapolis, Minnesota
Chief Resident, June, 1989 to June, 1990

Robert Wood Johnson Clinical Scholars Program,
Stanford University/UCSF Clinical Scholar, July 1991 to July 1993

Honors and Awards:

NIH/Council of Science Editors Award for the Global Theme Issue on Poverty and Human Development, October 22, 2007. The article entitled, "Food insufficiency is associated with high-risk sexual behavior among women in Botswana and Swaziland" (PLoS Medicine. 2007;4(10): e260.) was one of 7 articles chosen among more than 1000 articles published in 235 journals from 37 countries.

University of Minnesota, Department of Medicine 2005 Distinguished Alumni Award

The Center for Victims of Torture 2004 Eclipse Award for extraordinary service on behalf of torture survivors

Certificate of Commendation for Volunteer Efforts to Aid Refugees, State of Minnesota, Governor's Office, 1989

Upjohn Achievement Award for Outstanding Research and Scholarship, 1985

Joseph Collins Foundation for Academic Achievement and Proficiency in the Arts and Letters, 1984 and 1985

Certifications:

Medical License, State of Minnesota, 1987 to 1991

Medical License, State of California, 1991 to Present

American Board of Internal Medicine, Certified in 1989 to Present

Professional Society Memberships:

American College of Physicians, Member

American Medical Association, Member

American Public Health Association, Member

Medical Practice:

General Medicine Attending Physician American Refugee Committee Aranyaprathet, Thailand, July, 1986 to April, 1987

Internal Medicine Staff Physician, Group Health Inc., St. Paul, Minnesota, April, 1989 to June, 1989

General Medicine Attending Physician Mendi Provincial Hospital, Papua New Guinea, July, 1990 to February, 1991

Internal Medicine Attending Physician V.A. Medical Center, Palo Alto, California, July, 1991 to October, 1994.

Medical Director and Staff Physician Survivors International, San Francisco, California, September, 1991 to July, 1997.

Teaching Experience:

Adjunct Professor of Medicine, University of Minnesota School of Medicine, November 18, 2005 to present.

Instructor, UC Berkeley, Health and Medical Sciences Program. "Human Rights and Health" course given to students in the UCB/UCSF Joint Medical Program and the UCB School of Public Health. July 1994 to present.

Clinical Instructor, Internal Medicine, V.A. Medical Center, Palo Alto, California
Department of Medicine, July, 1991 to October, 1994

Clinical Instructor, Mendi Provincial Hospital, Papua New Guinea, July, 1990 to February, 1991

Clinical Instructor, 2nd, 3rd, and 4th year Medical Students, V.A. Medical Center, Minneapolis, Minnesota, June, 1989 to June, 1990

Clinical Instructor, Adult Medicine, Site 2 South, American Refugee Committee, Aranyaprathet, Thailand, July, 1986 to April, 1987

Teaching Assistant and Tutor, Medical Physiology, Georgetown University School of Medicine, 1981, 1982 and 1983

Teaching Assistant, Microbiology and Anatomy and Physiology, Georgetown University, 1982 and 1983

Human Rights Publications:

1. Allen S, Keller A, Reisner S, Iacopino V. Aiding Torture: Health Professionals' Ethics and Human Rights Violations Revealed in the May 2004 CIA Inspector General's Report. Physicians for Human Rights, August 2009.
2. Hirschfeld K, Leaning J, Crosby S, Piwowarczyk L, VanRooyen J, Greenough G, Susan S, Fricke A, Sirkin S, Black L, Iacopino V, Lanigan, K. Nowhere to turn: Failure to Protect, Support, and Assure Justice for Darfuri Women. Physicians for Human Rights. May, 2009.
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5. Forensic Documentation of Torture and Ill Treatment: An Assessment of the Implementation Process of the Istanbul Protocol Standards. Moreno A, Iacopino V. Physicians for Human Rights. December, 2008. pp. 1-116.
6. Moreno A, Iacopino V. Forensic Investigations of Torture and Ill-Treatment in Mexico: A Follow-Up Study After the Implementation of the Istanbul Protocol. *Journal of Legal Medicine*. 2008; 29(4):443-478.

7. Hashemian F, Crosby S, Iacopino V, Keller A, Nguyen L, Ozkalipici O, et, al. Broken Laws, Broken Lives: Medical Evidence of Torture by US Personnel and It's Impact. Physicians for Human Rights. June, 2008. pp. 1-130.
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12. Leiter K, Voravit Suwanvanichkij V, Tamm I, Iacopino V, Beyrer C. Human rights abuses and vulnerability to HIV/AIDS: the experiences of Burmese women in Thailand. *Health and Human Rights*. 2007;9(2) (In Press),
13. Weiser S, Leiter K, Heisler M, McFarland W, Percy-de Korte F, DeMonner S, Tlou S, Phaladze N, Iacopino V, Bangsberg D. A population-based study on alcohol and high-risk sexual behaviors in Botswana. PLoS Medicine. 2006;3(10):e-392.
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Human Rights Work:

Physicians for Human Rights, Senior Medical Advisor, August, 2005 to present.

Physicians for Human Rights, Director of Research, August 2002 to August, 2005.

Physicians for Human Rights, Senior Medical Advisor, July, 1997 to August 2002.

Physicians for Human Rights, Western Regional Director, San Francisco, California July, 1993 to June, 1997.

Medical Director and Staff Physician Survivors International, San Francisco, California, September, 1991 to June, 1997.

Human rights documentation investigations representing Physicians for Human Rights to Thailand, 1992; Punjab, India, 1992, 2005; Kashmir, India, 1992; Turkey, 1994, 1995, 1995, 1996; South Africa, 1997; Afghanistan, 1998, 2000 and 2001; Albania and Macedonia, 1999; Chechnya, 2000; Sierra Leone, 2001; Mexico, 2002-2006; Nigeria, 2002; Iraq, 2003; Botswana and Swaziland, 2003-2005, the United States 2000-2004, and Sudan 2005-2006.

Principal International Coordinator for the United Nations Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), 1996-2001.

Expert Advisory Board, International Human Rights Program, Trinity College, 1996-present.

Certificate of Participation: XII International Training Seminar on Rehabilitation of Torture Survivors and Their Families, November 22-26, 1993, RCT/IRCT, Copenhagen, Denmark

Consultant to the American College of Physicians' Sub- Committee on Human Rights; September, 1992 to October, 1995.

Board Member, Survivors International, September, 1991 to June, 1996 and July, 1997 to present.

Board Member, Boston Center for Refugee Health and Human Rights

Editorial Board Member, Western Journal of Medicine, 1999 to 2002.

Editorial Board Member, Journal of Immigrant Health, 1996 to 1999.

ATTACHMENT

B



**DEPARTMENT OF DEFENSE
OFFICE OF THE CHIEF DEFENSE COUNSEL
OFFICE OF MILITARY COMMISSIONS**

19 DEC 2012

MEMORANDUM FOR THE CONVENING AUTHORITY¹

SUBJ: DEFENSE'S REQUEST FOR FUNDING OF DR. BARRY ROSENFELD TO TESTIFY AS AN EXPERT WITNESS BEFORE THE MILITARY COMMISSION SESSION OF 15-17 JANUARY ICO *UNITED STATES v. AL-NASHIRI*.

Ref: R.M.C. 703(d).

1. The defense respectfully requests funding for Dr. Barry Rosenfeld as an expert witness to testify on behalf of the accused at a hearing to be held in Guantanamo during the next court session on 15-18 January 2013.

2. Reasons for Testimony. You have approved the funding of Dr. Rosenfeld to act as a defense consultant. Dr. Rosenfeld was previously approved as an expert witness. At the January hearing, the defense will be arguing AE 118, Defense Motion to Cease the Use of Belly Chains by JTF-GTMO. In this motion, the defense argued that the use of the "belly chain" by JTF-GTMO may likely re-traumatize Mr. Al-Nashiri, a victim of torture. Dr. Rosenfeld's testimony will discuss this topic. Specifically, Dr. Rosenfeld will demonstrate why the continued use of unnecessary belly chains re-traumatizes Mr. Al-Nashiri and the resulting effects of that re-traumatization.

Further, the government has moved for a competency evaluation under R.M.C. 706. The defense's response to this motion is due on 28 December 2012; however, the defense submits this request now since the defense may ask that Dr. Rosenfeld testify concerning aspects of that motion and the defense response. In the defense response, defense will propose various objections and limitations to any 706 evaluation the Commission might order. Dr. Rosenfeld will testify about the need for the requested limitations and the impact that the failure to impose such limitations will have on the validity of any 706 evaluation. Dr. Rosenfeld's testimony is germane to the defense's response to the government's motion.

4. Estimated Cost.

a. Total hours/days and total cost: The current scheduled flight from Washington D.C. to Guantanamo Bay for the hearing is from 14 January to 18 January 2013. Thus according to the regulation for trial by military commission, counsel anticipates Dr. Rosenfeld will be "required to attend court" from 14 January to 18 January and request funding for 40 hours. Dr. Rosenfeld charges \$300.00 per hour. Total Cost--\$12,000.

b. Total days TDY at the per diem rate (such as travel days and casual status), if any: Defense requests up to 5 days TDY to Guantanamo Bay depending upon travel arrangements and 1 day TDY to Washington D.C.

¹ This memorandum is being served upon the prosecution. This requirement violates the defendant's rights guaranteed by the M.C.A., the Fifth, Sixth and Eighth Amendments to the Constitution of the United States of America. The accused does not waive this issue upon review.

c. Travel costs, if any: Dr. Rosenfeld is based in New York City. The defense requests an opportunity for Dr. Rosenfeld to travel to Washington D.C and to Guantanamo Bay, Cuba to testify before the Commission.

5. Conclusion. For all the forgoing reasons the defense requests permission to employ Dr. Barry Rosenfeld to testify in behalf of the accused in support of a motion concerning AE 118 and in response to the government's motion for a competency evaluation under R.M.C. 706. Failure to grant this request will violate the accused's rights guaranteed by the Fifth, Sixth and Eighth Amendments to the Constitution of the United States of America as well as Rule 703 of the Rules for Military Commissions.

//s//

STEPHEN C. REYES

Lieutenant Commander

Detailed Defense Counsel

ATTACHMENT

C



Convening Authority

OFFICE OF THE SECRETARY OF DEFENSE
OFFICE OF MILITARY COMMISSIONS
4800 MARK CENTER DRIVE
ALEXANDRIA, VA 22350-2100

January 9, 2013

MEMORANDUM FOR MR. RICHARD KAMMEN, DEFENSE COUNSEL

SUBJECT: Defense Request for Funding of Expert Witness – *U.S. v. al-Nashiri*

I considered carefully your request dated December 28, 2012, for funding of Dr. Vincent Iacopino as an expert witness to testify at the hearing scheduled for January 15-17, 2013. For the reasons set forth below, I deny your request.

You have not demonstrated why it is necessary for Dr. Iacopino to testify on behalf of Mr. al-Nashiri on the government motion for an R.M.C. 706 evaluation. On December 19, 2012, you requested appointment and funding of Dr. Barry Rosenfeld as an expert witness to “testify in behalf of the accused in support of a motion concerning AE 118 and in response to the government’s motion for a competency evaluation under R.M.C. 706.” On December 21, 2012, I granted your request for Dr. Rosenfeld as an expert witness. It appears that Dr. Iacopino’s testimony would be cumulative with the testimony of Dr. Rosenfeld.

Contrary to footnote 2 in your request for Dr. Iacopino, I have provided the defense with Dr. Rosenfeld as both an expert consultant and an expert witness to assist the defense in discussing issues of torture. Based on your representations, Dr. Rosenfeld is an expert in evaluating victims of torture in accordance with the Istanbul Protocol. In your request for Dr. Rosenfeld as an expert consultant, dated January 23, 2012, which I approved, you stated that he had “extensive experience in the evaluation of victims of torture in accord with The Manual on Effective Investigation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol),” and that “Dr. Rosenfeld is one of a very few number of psychologists in the United States competent to evaluate Mr. Al-Nashiri for the psychological effects of that torture.” Therefore, Dr. Rosenfeld is an expert in the same area as Dr. Iacopino, and is qualified to testify about the proper methods for examining an individual who has allegedly been subjected to torture. Accordingly, I must deny your request for Dr. Iacopino as an expert witness.

Bruce MacDonald
Convening Authority
for Military Commissions

cc:
LCDR Reyes
Mr. Mattivi

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