

UNITED STATES OF AMERICA

v.

ABD AL-RAHIM HUSSEIN MUHAMMED

ABDU AL-NASHIRI

**DEFENSE MOTION TO COMPEL THE
CONVENING AUTHORITY TO PROVIDE
ADDITIONAL FUNDING FOR MR.
AHMAD ASSED AS AN EXPERT
CONSULTANT TO THE DEFENSE**

June 11, 2014

- 1. Timeliness:** This request is filed within the timeframe established by Rule for Military Commission (R.M.C.) 905 and pursuant to Military Commission Rules of Court (R.C.) 3.5e.
- 2. Relief Requested:** The defense requests that the Commission order the Convening Authority to provide additional funding for Mr. Ahmad Assed, in order that he may continue to serve on this case.
- 3. Overview:** Mr. Ahmad Assed has been an expert consultant for Mr. Nashiri, approved and funded by the Convening Authority since 10 February 2012. Mr. Assed is an American attorney and is Muslim. Though he has not been able to receive the requested security clearance which would allow him to meet Mr. Al-Nashiri and appear in this case, Mr. Assed has played a critical role in developing mitigation evidence for the defense. Members of Mr. Al-Nashiri's family reside in Mecca, Saudi Arabia. The family members are also Muslim.

As a male Muslim, Mr. Assed has been critical in building relationships and trust with Mr. Al-Nashiri's family. He has also made travel possible within Mecca, Saudi Arabia, because of his religious ties and connections with the culture. Mr. Assed has accompanied detailed defense counsel on trips to Saudi Arabia and regularly conducts communication with Mr. Al-Nashiri's family and detailed defense counsel via Skype. Mr. Assed has been found necessary

and relevant to the defense by the Convening Authority on 10 February 2012 and 2 June 2013.

To date, Mr. Assed has used 396 funded hours on working Mr. Al-Nashiri's mitigation case.

On 14 May 2014 the defense requested additional funding for Mr. Assed so that he can continue his work on the case including: continuing assistance in phone calls with Mr. Al-Nashiri's family; assisting in making travel arrangements for Mr. Al-Nashiri's family to travel from Mecca, Saudi Arabia to the United States to testify during the trial of this cause, or other locations in the Middle East so that they may consult with counsel and prepare their trial testimony; and accompany detailed counsel on future trips to Saudi Arabia or other locations in the Middle East. On 5 June 2014, the Convening Authority denied this defense request for additional funding. The Convening Authority denied the request due to lack of specificity. (Attachment F, page 2, 3d full paragraph) (“...[Y]ou have not provided the specific information that is required for me to ascertain whether Mr. Assed continued services...”). The Convening Authority hinges this decision, not on a determination of necessity or relevance, but on the defense's use of the term may in its 14 May 2014 request. (Attachment F, page 1, 5th full paragraph).

The defense respectfully requests the Commission to compel the Convening Authority to provide additional funding for Mr. Ahmad Assed so that he may continue his work with the Mr. Al-Nashiri's defense.

4. Burden of Proof and Persuasion: The defense bears the burden of persuasion as the moving party on this motion and the standard is preponderance of the evidence, R.M.C. 905(c). However, denial of this motion will violate 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.

5. Facts:

a. Mr. Ahmad Assed has been a part of Mr. Al-Nashiri's defense team since 10 February 2012. (Attachment A and C).

b. Mr. Ahmad Assed has been deemed relevant and necessary by the Convening Authority for the purposes of communicating with Mr. Al-Nashiri's family, traveling to Saudi Arabia and developing mitigation evidence. Mr. Assed has worked 396 approved funded hours to these ends since 10 February 2012. (Attachment B and D)

c. On 14 May 2014, the defense requested additional funded hours for Mr. Assed in order to allow him to continue facilitating communication with Mr. Al-Nashiri's family, accompany defense on future foreign travel and continue in the development of the defense case in mitigation. (Attachment E)

d. On 5 June 2014, the Convening Authority denied the defense request for additional funding due to lack of specificity. (Attachment F)

6. Argument

A. Standard Applicable to the Authorization of Defense Experts

The MCA 2009 and the Manual for Military Commissions authorize the employment of experts to assist the parties in both the development and presentation of their cases. Chapter 47A, Title 10 U.S.C. §949j(a)(1) provides, "[d]efense counsel in a military commission under this chapter shall have a reasonable opportunity to obtain witnesses and other evidence as provided in regulations prescribed by the Secretary of Defense. The opportunity to obtain witnesses and evidence shall be comparable to the opportunity available to a criminal defendant

in a court of the United States under article III of the Constitution.” Furthermore, R.M.C. 703(d) lays out the framework for the employment of expert witnesses. In order to employ an expert at government expense, a party must submit a request to the convening authority to authorize and to fix the compensation for the expert. R.M.C. 703(d). A request denied by the convening authority may be reviewed by the military judge, who shall determine whether the testimony of the expert is relevant and necessary. R.M.C. 703(d). At this time, Mr. Assed is only requested as a defense consultant, however the same relevance and necessary inquiry applies.

B. Mr. Assed’s Unique Expertise is Relevant to the Defense’s Preparation of Its Case.

Mr. Assed has been critical in assisting the defense with developing rapport and goodwill with Mr. al Nashiri’s family. Mr. Assed has already been approved and worked 396 hours on Mr. Al-Nashiri’s mitigation case. Should he no longer be able to assist the defense, the loss would be devastating. Mr. Assed is the linchpin of the defense mitigation effort in Saudi Arabia. As a male, a Muslim and someone who is more informed of the cultural considerations of the region in general, Mr. Assed has an ability to accomplish tasks and negotiate with the various parties, including Saudi officials who have been tasked with assisting and/or monitoring the activities, the team with its mitigation investigation, that other members of the team simply cannot replicate. In many ways, the relationship Mr. Assed had developed with Mr. Nashiri’s family and with the Saudi officials in one of inherent trust, respect and mutual understanding; loss of those relationships would completely undermine the mitigation efforts in Saudi Arabia.

Mr. Assed is relevant to the continued work in the following areas: 1.) Mr. Assed will continue to assist the defense by participating in periodic phone calls with Mr. Nashiri’s family; 2.) Mr. Assed will assist Mr. Nashiri’s family and the defense as the defense seeks permission for Mr. Nashiri’s family to come to the United States to meet with counsel, observe the court

proceedings and testify during Mr. Nashiri's trial, now set for February 2015; 3.) Mr. Assed may also be asked to accompany counsel on a trip to either Saudi Arabia or Dubai or other locations in the Middle East to meet with Mr. Nashiri's family and prepare them to testify in the event that they are precluded from coming to the U.S. to testify in Mr. Nashiri's trial.

The preparation for testimony of family to be presented in a penalty phase is very time consuming because it deals with issues that do not ordinarily appear to be important especially to people of another culture. It cannot ethically be done by telephone, Skype or via other web-based communications. Preparing testimony of Mr. Al-Nashiri's family cannot be accomplished solely by learned and detailed defense counsel due to language and cultural differences. Mr. Assed's language fluency, cultural awareness and status as a male in the Saudi society facilitate the continued development of this mitigation evidence for defense. Mr. Assed's assistance is critical in this aspect of defense preparation. Overall, Mr. Assed is relevant to assuring that Mr. Al-Nashiri is able to prepare an adequate and full case in mitigation for this capital case.

C. Mr. Assed's Unique Expertise Is Necessary For The Defense's Continued Relationship with Mr. Al-Nashiri's Family and Development of a Case in Mitigation

The defense is preparing for a trial which is currently scheduled to begin with member selection on 5 January 2015. The continued work and funding of Mr. Assed is necessary at this time.

Mr. Assed's assistance is needed to continue the development of mitigation evidence in this case. Saudi Arabia is an extremely closed society in which religion plays an overarching role in every area of society. The way in which Saudis go about their daily lives is quite different in many regards than life in the United States. One must have more than a rudimentary understanding of Islam and its impact on the way Saudis conduct themselves in their personal

and professional lives in order to effectively—and without being offensive—interact in manner necessary for a successful mitigation investigation.

Further, collecting and compiling evidence and developing the client's life history for presentation to a jury is a fluid process—one which is ongoing throughout each phase of trial. In this case a significant portion of that story “lives” in Mecca, Saudi Arabia. It is a sacred place that our non-Muslim mitigation specialist—indeed all of our attorneys as well—are not able to enter. Mr. Assed has offered invaluable assistance by being about to Mecca, exploring that part of Mr. Al-Nashiri's life that is so critical to his mitigation case.

The interactions with Mr. Al-Nashiri's family as it relates to mitigation require a level of awareness and sensitivity that does not come naturally for Westerners. The interplay of religion and its impact gender-roles is hugely significant. Men are just “more able” to get the job done, gain ground and be heard than women. Furthermore, the whole concept of mitigation is difficult to explain and for the family members to fully comprehend given the societal differences. Additionally, Mr. Al-Nashiri's family members are Saudis of Yemeni descent, which creates an added layer of difficulty. Building rapport, developing the family's trust and maintaining communication with them is critical to a success mitigation investigation.

The defense is unable to adequately continue the development of its case in mitigation without Mr. Assed's assistance.

D. Denial of Mr. Assed Would Result in a Fundamentally Unfair Trial

Denial of additional funding for Mr. Assed would result in a fundamentally unfair trial for the accused. An expert must be provided where the defense establishes:

[t]hat a reasonable probability exists that (1) an expert would be of assistance to the defense and (2) that denial of expert assistance would result in a fundamentally unfair trial. *United States v. Freeman*, 65 M.J. 451, 458 (C.A.A.F. 2008)

It is fundamental that the defense must be able to confer with experts to determine how to investigate and provide effective assistance to the accused. *See, e.g., Ake v. Oklahoma*, 470 U.S. 68, 86-87 (1985) (reversing and remanding case for a new trial because denial of expert deprived defendant of due process).

In seeking Mr. Assed's continued assistance as a consultant, the defense seeks to maintain the work it has done over the past two years in developing a trusting relationship with Mr. Al-Nashiri's family and developing evidence for the defense case in mitigation. Despite the Convening Authority's recent denial over and concern with specificity (Attachment 5, page 2 3d full paragraph), Mr. Assed has been able to complete 396 previous hours on this case since 10 February 2012 in the same areas of work delineated by the defense in its 14 May 2014 request. (e.g. communication with family, travel and assistance in travel arrangements, and continued development of mitigation evidence) (Attachment E). The defense even identified a new area of need for Mr. Assed's assistance in preparing Mr. Al-Nashiri's family to testify in the mitigation phase of this capital commission in its most recent request for funding. The denial by the Convening Authority is meritless, based primarily on semantics, and places an onus on the defense to provide a detailed prospective work schedule for Mr. Assed. The basis provided by the defense in its 14 May 2014 request is sufficient. This request parallels previous requests from the defense for Mr. Assed that were approved by the Convening Authority. The interruption, at this stage of the case with trial scheduled to start in seven months tactically serves to disrupt the defense's development of its mitigation case. Given his prosecutorial function this is arguably the Convening Authority's goal.

E. Congress Intended to Assure Defense Resourcing in its 2009 Amendments to the Military Commissions Act and that Assurance was Re-emphasized in May 2014 by the Office of the Secretary of Defense

The current legislation and creation of legislation for these Military Commissions demonstrate a clear intent to provide adequate defense resourcing in line with the professional norms of the American legal system. The Military Commissions Act (MCA) of 2009 states specifically that:

It is the sense of Congress that:

- (1) the fairness and effectiveness of the military commissions system under chapter 47A of Title 10, United States Code (as amended by section 1802), will depend to a significant degree on the adequacy of defense counsel and associated resources for individuals accused, particularly in the case of capital cases, under such chapter 47A; and
- (2) defense counsel in military commission cases, particularly in capital cases, under such chapter 47A of Title 10, United States Code (as so amended), should be fully resourced, as provided in such chapter 47A. (10 U.S.C. § 1807)

In making the 2009 amendments to the MCA, the Conference Committee Report specifically noted concerns over the fact that the military commission suffered from “systemic under-resourcing of the defense needs of capital and other cases brought before military commissions.” Joint Explanatory Statement of the Conference Committee, National Defense Authorization Act for Fiscal Year 2010, Report 111-288, at 862.1. In view of these issues, “the conferees strongly encourage the Secretary of Defense to take appropriate steps to ensure the adequacy of representation for detainees, particularly in capital cases. The conferees further expect the Secretary, in prescribing regulations under section 948k(c)(2), of Title 10, United States Code, to give appropriate consideration to the American Bar Association’s Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases (February 2003) and other comparable guidelines.” *Id.*¹ The commentary portion to Guideline 1.1 states that “[c]ounsel must promptly obtain the investigative resources necessary to prepare for both phases, including at a minimum...all professional expertise appropriate for the case.” ABA Revised

¹ Available at http://www.dtic.mil/congressional_budget/pdfs/FY2010_pdfs/AUTH_CONF_111-288.pdf (Last accessed, 14 March 2014)

Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases,

Guideline 1.1.

In making these pronouncements Congress relied upon the experience in federal courts. Federal courts have frequently relied on the professional standards established by the ABA when determining the relevant professional norms under the first prong of the *Strickland* analysis. See e.g., *Rompilla v. Beard*, 545 U.S. 374, 375 (2005) (citing the ABA Death Penalty Guidelines and stating that “[w]e long have referred [to these ABA Standards] as guides to determining what is reasonable”) (citations and internal quotation marks omitted); *Florida v. Nixon*, 543 U.S. 175, 191 (2004) (citing ABA Death Penalty Guidelines in addressing ineffective assistance under *Strickland*); *Canaan v. McBride*, 395 F.3d 376, 384 (7th Cir. 2005) (“We follow the [Supreme] Court’s lead...by looking first to the [ABA Death Penalty Guidelines].”). Indeed, the Supreme Court referred to the ABA Death Penalty Guidelines in *Strickland* itself, noting that the guidelines reflect “[p]revailing norms of practice.” 466 U.S. at 688.

On 7 May 2014, the Deputy Secretary of Defense re-emphasized and sought to re-enforce equitable resourcing for Military Commissions.

The fairness and effectiveness of the military commissions system depend to a significant degree on the adequacy of defense counsel *and associated resources for individuals accused, and it is important that defense counsel in these matters be fully resourced.* To conduct a fair, just and transparent military commissions process necessitates our continuing commitments to dedicate sufficient resources and skilled legal professionals to both prosecution and defense.

Deputy Secretary of Defense, Memorandum for Secretaries of the Military Departments, General Counsel of the Department of Defense, Director, Administration and Management, Convening Authority of Military Commissions, dated 7 May 2014 (Attachment G) [Emphasis added]

This adequacy is severely undermined where the Convening Authority cuts off access to a defense resource that has been approved continually over the past two years. That this would occur shortly in advance of a scheduled trial date is especially troubling. The defense requests

that the Commission make these directions and intent from Congress and the Office of the Secretary of Defense more than just aspirational goals with no practical effect.

7. **Oral Argument:** The defense requests oral argument.
8. **Witnesses:** None.
9. **Conference with Opposing Counsel:** The Defense has conferred with the Prosecution and it opposes this request.

10. List of Attachments:

- A. Defense Funding Request, Mr. Ahmad Assed, dated 23 January 2012 (4 pages)
- B. Convening Authority Funding Approval, Mr. Ahmad Assed, dated 10 February 2012 (3 Pages)
- C. Defense Funding Request, Mr. Ahmad Assed, dated 2 June 2013 (4 pages)
- D. Convening Authority Funding Approval, Mr. Ahmad Assed, dated 20 June 2013 (2 pages)
- E. Defense Funding Request, Mr. Ahmad Assed, dated 14 May 2014 (3 pages)
- F. Convening Authority Funding denial, Mr. Ahmad Assed, dated 5 June 2014 (2 pages)
- G. Deputy Secretary of Defense, Memorandum for Secretaries of the Military Departments, General Counsel of the Department of Defense, Director, Administration and Management, Convening Authority of Military Commissions, dated 7 May 2014 (2 pages)

/s/ Brian Mizer
BRIAN L. MIZER
CDR, JAGC, USN
Assistant Detailed Defense Counsel

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

/s/ Thomas Hurley
THOMAS F. HURLEY, Maj, US-A
Assistant Detailed Defense Counsel

/s/ Daphne Jackson
DAPHNE L. JACKSON, Capt, USAF
Assistant Detailed Defense Counsel

/s/ Richard Kammen
RICHARD KAMMEN
DOD Appointed Learned Counsel

CERTIFICATE OF SERVICE

I certify that on 11 June 2014 I electronically filed the forgoing document with the Clerk of the Commission and served the forgoing on all counsel of record on the date of filing.

/s/Richard Kammen

Richard Kammen / #5064-49

KAMMEN MARYAN & MOUDY

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Indianapolis, IN 46204

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ATTACHMENT

A

GILROY, KAMMEN, MARYAN & MOUDY

*An Association of Attorneys
Not in Partnership*

135 NORTH PENNSYLVANIA STREET
SUITE 1175

INDIANAPOLIS, INDIANA 46204
317-236-0400

January 23, 2012

MEMORANDUM TO THE CONVENING AUTHORITY¹

1. The defense respectfully requests funding of Mr. Ahmad Assed as a consultant to assist the defense in locating mitigation and other resources in Saudi Arabia and to assist counsel and the appointed mitigation specialist in working with the accused's family; and in conducting an investigation in Mecca, Saudi Arabia.

2. Appointment of Mr. Assed at This Time Is Necessary. The defense is tasked with the obligation to investigate both the defendant's guilt and innocence and any possible mitigation evidence. The crimes with which the accused is charged took place in Yemen. The defendant grew up in Saudi Arabia. Important guilt/innocence and mitigation investigations must be done in both locations. Mr. Assed is an American lawyer and is Muslim. He has traveled extensively throughout the Middle East and speaks Arabic. For some time now, Mr. Assed has acted as an interpreter between learned counsel and the accused's family. As a Muslim, he can visit their home city, which counsel cannot. He will also assist counsel to develop resources in Saudi Arabia and possibly Yemen. Because of uncertainty as to the mechanics of requesting resources, this application could not have been previously submitted.

3. Qualifications.

See attached CV²

4. Expert consultant's address and telephone number.

818 Fifth St. N.W.
Albuquerque, NM 87102
505-246-8373

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

² Mr Assed has no security clearance.. It is possible that the defense may seek to have him cleared to meet with the accused in the future.

5. Complete statement of reasons why the expert consultant is necessary. Mr. Al-Nashiri is alleged to be the mastermind of the bombing of the U.S.S. Cole and related crimes. The prosecution seeks to kill him if he is convicted.

Members of the accused's family reside in Mecca, Saudi Arabia, and others in Yemen. Counsel with the assistance of Mr. Assed have spoken with the accused's family on several occasions by telephone. For reasons that the defense prefers not to share publically, it has taken considerable effort to obtain the minimal level of trust the family may have in counsel. **None of the current defense team** can personally visit the family in Mecca because they are not Muslim. At this time it does not appear that the family will be willing to travel to meet counsel. Accordingly, it will be necessary for at least one person who is part of the defense team³, who is Muslim, to be able to travel to Saudi Arabia to meet with the accused's family and try to arrange a series of mitigation interviews in a location other than Mecca. In counsel's opinion, Mr. Assed has sufficiently obtained the family's trust to have some possibility of accomplishing this task. Moreover, as a Muslim, he is not restricted from traveling to Mecca. Inserting a new individual onto the defense team to begin working with the family would undermine the limited trust the family has in the defense.

Mr. Assed will assist in the development of a mitigation investigation in conjunction with the mitigation specialist and resources that he will hopefully develop in Mecca, other areas of Saudi Arabia, and Yemen. Learned counsel and the mitigation specialist have experience in capital cases, but they are not Muslim and are forbidden from traveling to Mecca. Accordingly, they require the assistance of someone who can conduct the additional mitigation investigation required in this city. As noted above, Mr. Assed can assist counsel in locating people in Mecca and elsewhere in Saudi Arabia who can, working under the supervision of the mitigation specialist, fulfill this role.

Counsel's investigation reveals that Saudi Arabia is a closed society. As Americans, who cannot speak Arabic, Counsel will need assistance in learning how to negotiate the intricacies of working in a closed environment and in developing resources within Saudi Arabia to assist counsel in their investigations. Mr. Assed, with his background as an attorney, will be of invaluable assistance in this effort.

Finally, the defense is tasked with doing a guilt/innocence and mitigation investigation in Yemen, and it is possible that Mr. Assed may be asked to assist counsel in locating resources there who can assist in those investigations.

6. Estimated Cost.

a. Total hours/days and total cost:

³ One of the huge cultural difference between Saudi Arabia and other locations is in the area of contact between the sexes. It is generally prohibited that a man would speak directly with a woman, not a family member, alone. Accordingly it may be necessary to locate both a male and female who have the skill and ability to interview the family and others in Mecca.

The defense estimates that it will have to spend approximately 25 hours total to meet with Mr. Assed prior to his overseas trips. Mr. Assed will require 250 hours total to conduct his work in Saudi Arabia and Yemen. Total hours: 275. Mr. Assed has agreed to charge only \$178.00 for his time, the CJA rate for capital cases. The total cost for fees, excluding travel, should not exceed \$48,950.

- b. Total days TDY at the per diem rate (such as travel days and casual status), if any:
 - i. Domestic Travel: Mr. Assed will require at least 4 days of travel to Washington D.C. to meet with counsel.
 - ii. Overseas Travel: Mr. Assed will have to travel to Saudi Arabia and possibly Yemen. He may have to make at least two trips. Each trip could take as many as 10 days.

- b. Travel costs, if any:
 - i. Domestic Travel. Travel to Washington DC for team meetings and/or to consult with counsel.
 - ii. Overseas Travel. Travel to Saudi Arabia and possibly Yemen.

- d. Rate for professional services and hours/days including travel: \$178.00/ hr

- e. Inconvenience Fee: None.

7. Conclusion. For all the forgoing reasons the defense requests permission to employ Mr. Ahmad Assed to assist the defense in preparing to perform investigations in Saudi Arabia and Yemen. Denial of this motion will violate the defendant's rights guaranteed by the Fifth, Sixth and Eighth Amendments to the Constitution of the United States of America.

//s Richard Kammen
DOD Appointed Civilian Learned Counsel

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

/s/Allison Danelis
Assistant Detailed Defense Counsel

/s/ Michel Paradis
MICHEL PARADIS
Assistant Detailed Defense Counsel

CC:
Anthony Mattivi, Trial Counsel

ATTACHMENT

B



Convening Authority

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

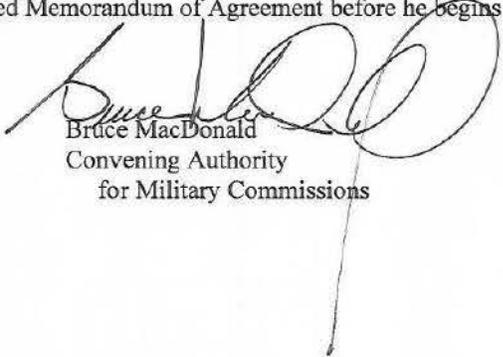
February 10, 2012

Richard Kammen, Esq.
Gilroy, Kammen, Maryan and Moudy
135 N. Pennsylvania Street, Suite 1175
Indianapolis, IN 46204

Dear Mr. Kammen:

I considered carefully your request dated January 23, 2012, for appointment of Mr. Ahmad Assed as a consultant to assist the defense in conducting a guilt/innocence and mitigation investigation in Saudi Arabia and Yemen. I find that the reasons set forth in your request demonstrate the necessity for such assistance, and I approve your request to appoint Mr. Assed as a consultant. By this approval, Mr. Assed is not being appointed, detailed, and/or retained as an attorney for the defense in the *Nashiri* case.

I do not, however, approve the fee rate of \$178.00 per hour, which is the current rate for Criminal Justice Act paneled attorneys assigned to capital cases. Rather, I approve consultant fees for Mr. Assed at the rate of \$125.00 per hour, which is consistent with the rate approved for your mitigation specialist, up to 275 hours, totaling no more than \$34,375.00. I also authorize funding for travel and ordinary expenses for Mr. Assed to travel between his place of work in Albuquerque, New Mexico, Washington D.C., Saudi Arabia, and Yemen to perform such services. If other international travel is required, please submit a separate request for each trip outside the United States that Mr. Assed plans to make. Expert fees are not payable for travel time. Per Chapter 13-9, Regulation for Trial by Military Commission (2011), please have Mr. Assed execute and return to this office the attached Memorandum of Agreement before he begins any work on this case.


Bruce MacDonald
Convening Authority
for Military Commissions

Attachment:
As stated

cc:
LCDR Reyes
Mr. Mattivi

Printed on  Recycled Paper

**MEMORANDUM OF AGREEMENT
(AHMAD ASSED)**

1. **Mr. Ahmad Assed** is hereby retained as a consultant to assist the defense in conducting a guilt/innocence and mitigation investigation in Saudi Arabia and Yemen.
2. **Mr. Ahmad Assed** acknowledges, understands, and agrees to all the terms contained in this Memorandum of Agreement (“MOA”). Mr. Assed further agrees to the following:
 - a. To act solely as a consultant for the defense by assisting the defense in conducting a guilt/innocence and mitigation investigation in Saudi Arabia and Yemen.
 - b. That he is not being appointed, detailed, and/or retained as a defense attorney for the *Nashiri* case by this MOA, and that he is not authorized to act in any such capacity for the defense by this MOA.
 - c. That he will only be compensated for his work as a consultant, as set forth in this MOA.
 - d. To submit an invoice for services rendered as a consultant, as directed by the Office of Military Commissions Contracting Officer’s Representative (COR).
 - e. To submit a Government travel voucher for payment of travel expenses incurred, following the instructions provided with said travel voucher. Expert fees are not authorized for travel time.
3. The Government agrees to the following:
 - a. To pay Mr. Assed an expert fee of \$125.00 per hour when professional consultant advice and services are rendered. Payment will be made up to a maximum of \$34,375.00 (275 hours) for expert fees.
 - b. Compensation for in-court testimony is not authorized under this MOA.
 - c. Funding for travel and ordinary expenses for Mr. Assed to travel between his place of work in Albuquerque, New Mexico, Washington D.C., Saudi Arabia, and Yemen is authorized as necessary. The Government agrees to pay actual travel costs, either coach air travel, or mileage in accordance with the Joint Travel Regulation. The Government also agrees to pay per diem for meals, and the lesser of

**MEMORANDUM OF AGREEMENT
(AHMAD ASSED)**

actual cost of lodging or the Government local lodging rate in accordance with the Joint Travel Regulation.

- d. If other international travel is required, Mr. Assed must submit a separate request for each trip outside the United States that he plans to make.
- e. Payment under this agreement has been approved by the Convening Authority, Office of Military Commissions, and the balance will be paid by the United States Government.

Convening Authority/ Date

Expert Consultant/ Date

ATTACHMENT

C

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RICHARD GILROY
MARY SPEARS

June 2, 2013

MEMORANDUM TO THE CONVENING AUTHORITY¹ *ICO UNITED STATES V. MR. ABD RAHIM AL-NASHIRI*

SUBJ: REQUEST FOR ADDITIONAL FUNDING FOR DEFENSE EXPERT CONSULTANT MR. AHMAD ASSED

1. The defense respectfully requests funding for an additional 275 hours for Mr. Ahmad Assed as a consultant to assist the defense in locating mitigation and other resources in Saudi Arabia, to assist counsel and the appointed mitigation specialist in working with Mr. al-Nashiri's family and to assist the defense in conducting a continuing investigation in Mecca, Saudi Arabia.

2. Funding of Additional Hours for Mr. Assed at This Time Is Necessary

The Convening Authority previously found that Mr. Assad's services were reasonably necessary for an effective defense. Accordingly, the Convening Authority funded 275 hours for Mr. Assed. These hours have been used in their entirety. The defense remains tasked with the obligation to investigate both Mr. al-Nashiri's guilt and innocence and any possible mitigation evidence.

The crimes with which Mr. al-Nashiri is charged took place in Yemen. Mr. al-Nashiri grew up in Saudi Arabia. Important guilt/innocence and mitigation investigations must be done in both locations. Mr. Assed is an American lawyer and is Muslim. He has traveled extensively throughout the Middle East and speaks Arabic. For some time now, Mr. Assed has acted as an interpreter between learned counsel and Mr. al-Nashiri's family. Indeed he is the primary point of contact between counsel and Mr. al-Nashiri's family. As a Muslim, he can visit the family's home city of Mecca, Saudi Arabia, which detailed and learned counsel cannot.

During the defense's recent trip to Saudi Arabia, Mr. Assad was invaluable in working with the family, working with Saudi authorities and working with potential

¹ This memorandum is being served upon the prosecution in accordance with R.M.C. 703(d). This requirement violates Mr. al-Nashiri's rights guaranteed by the Fifth, Sixth and Eight Amendments to the Constitution of the United States of America. Mr.al-Nashiri does not waive this issue upon review.

resources in Saudi Arabia. Those efforts must continue and Mr. Assad is absolutely necessary to continue this effort. This is especially true inasmuch as the defense contemplates one or more return trips to Saudi Arabia to develop mitigation evidence as resources.

3. Qualifications

See attached CV

4. Expert Consultant's Address and Telephone Number.

818 Fifth St. N.W.
Albuquerque, NM 87102
505-246-8373

5. Complete Statement of Why the Expert Consultant is Necessary

Mr. Al-Nashiri is alleged to be the mastermind of the bombing of the *USS Cole* and related crimes. The prosecution seeks to kill him if he is convicted.

Members of Mr. al-Nashiri's family reside in Mecca, Saudi Arabia, and others in Yemen. Counsel, with the assistance of Mr. Assed, has spoken with Mr. al-Nashiri's family on several occasions by telephone and SKYPE. Counsel visited Saudi Arabia in February 2013 on an initial mitigation investigation. Mr. Assad was invaluable in this effort. Mr. Assad is the only male member of the defense team who is Muslim. No other male on the defense team can personally visit the family in Mecca because they are not Muslim. Further, it increasingly may not be feasible for Mr. al-Nashiri's family to travel to meet with counsel. Mr. al-Nashiri's parents are elderly and increasingly frail. Accordingly, it will continue to be necessary for at least one Muslim male, who is part of the defense team², to be able to travel to Saudi Arabia to meet with Mr. al-Nashiri's family and try to arrange additional mitigation interviews in Mecca and elsewhere. In counsel's opinion, Mr. Assed has sufficiently obtained the family's trust to accomplish this task. Moreover, as a Muslim, he is not restricted from traveling to Mecca. Inserting a new individual onto the defense team to begin working with the family would undermine the limited trust the family has in the defense.

Mr. Assed will assist in the development of a mitigation investigation in conjunction with the mitigation specialist and resources that he will hopefully develop in Mecca and other areas of Saudi Arabia. Learned counsel and the mitigation specialist have experience in capital cases, but they are not Muslim and are forbidden from traveling to Mecca. Accordingly, they require the assistance of someone who can conduct the additional mitigation investigation required in this city. As noted above, Mr. Assed can assist counsel in locating people in Mecca and elsewhere in Saudi Arabia who can, working under the supervision of the mitigation specialist, fulfill this role.

² One of the huge cultural differences between Saudi Arabia and other locations is in the area of contact between the sexes. It is generally prohibited that a man would speak directly with a woman, not a family member, alone. Accordingly it has been necessary to locate both a male and female who have the skill and ability to interview the family and others in Mecca. Mr. Assad fulfilled the male role in this effort.

Counsel's investigation reveals that Saudi Arabia is a closed society. As Americans who cannot speak Arabic, counsel needs continued assistance in learning how to negotiate the intricacies of working in a closed environment and in developing resources within Saudi Arabia to assist counsel in their investigations. Mr. Assed, with his background as an attorney, provides invaluable assistance in this effort.

6. Estimated Cost

a. Total hours/days and total cost:

The defense estimates that it will have to spend approximately 25 hours total to meet with Mr. Assed prior to additional overseas trips. Mr. Assed will require 250 hours total to conduct additional work in Saudi Arabia. Total hours: 275. Mr. Assed has agreed to the hourly rate of \$125.00, previously authorized by the Convening Authority.

The total cost for fees, excluding travel, should not exceed \$34,375.00.

b. Total days TDY at the per diem rate (such as travel days and casual status), if any:

- i. Domestic Travel: Mr. Assed will require at least 6 days of travel to Washington, D.C. to meet with counsel.
- ii. Overseas Travel: Mr. Assed will have to travel to Saudi Arabia. He may have to make at least two trips. Each trip could take as many as 10 days. The last trip to Saudi Arabia taken by the defense lasted 17 days.

b. Travel costs, if any:

- i. Domestic Travel: Travel to Washington, D.C. for team meetings and/or to consult with counsel.
- ii. Overseas Travel: Travel to Saudi Arabia.

d. Rate for professional services and hours/days not including travel:
\$125.00/hour

e. Inconvenience Fee: None.

7. Conclusion

The defense respectfully requests additional funding for Mr. Ahmad Assad to assist the defense with mitigation investigations in Saudi Arabia. Denial of this motion

will violate 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 DTA, treaty obligations of the United States and fundamental fairness.

Respectfully Submitted

/s/ Richard Kammen
DOD Appointed Civilian Learned Counsel

Attachments:
Prior Approval
Mr. Assad's CV

Cc: Mr. Mattivi

ATTACHMENT

D



Convening Authority

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

June 20, 2013

MEMORANDUM FOR MR. RICHARD KAMMEN, DEFENSE COUNSEL

SUBJECT: Request for Additional Funding for Mitigation Investigator; *U.S. v. Al Nashiri*

I considered carefully your request dated June 2, 2013, for additional funding for Mr. Ahmad Assed as a mitigation investigator for the defense team representing Mr. Al Nashiri. For the following reasons, I grant your request, in part.

On February 10, 2012, my predecessor approved the employment of Mr. Ahmad Assed as a consultant, and not as an appointed, detailed, or retained counsel, to assist the defense in conducting a mitigation investigation, and authorized up to 275 hours of expert services at \$125.00 per hour, plus travel from the expert's home in Albuquerque, New Mexico, to Washington, D.C., and to Saudi Arabia. You indicated that the defense team, including Mr. Assed, went to Saudi Arabia in February 2013 for 17 days. Apparently, the witnesses and family members travelled to meet the defense team outside of Mecca. You also attest that you contacted them through Skype and telephone calls. You now request approval of an additional 275 hours for Mr. Assed to continue the mitigation investigation in Saudi Arabia, including continued contact with family members.

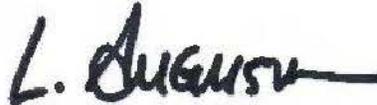
In order to ensure that you have all necessary resources, I approve funding for Mr. Assed for one round trip from his home in Albuquerque, New Mexico, to Washington, D.C., for up to 6 days total travel time, and for fees for expert services for up to 25 hours at \$125.00 per hour, in order to consult with defense counsel. I also approve funding for Mr. Assed for one round trip from his home to Saudi Arabia for up to 10 days total travel time, and for fees for expert services for up to 96 hours (12 hours a day x 8 non-travel days), in order to continue the mitigation investigation in Saudi Arabia. I find that you have not provided adequate justification at this time for a third trip to Saudi Arabia.

The expert compensation approved for Mr. Assed is a total of 121 hours at \$125.00 an hour, up to a maximum of \$15,125.00. Please note that expert fees are not authorized for travel time. The terms of this authorization are in the attached memorandum of agreement. Please have Mr. Assed execute and return to this office the attached memorandum of agreement, as required by the Regulation for Trial by Military Commission, ¶ 13-9a.

If you later believe that Mr. Assed needs additional funding beyond the 396 hours already approved, you may submit an additional request for funding. Any request for further funding that is submitted for my consideration must clearly demonstrate the necessity for the funding, including what work has been completed up to that point, what work remains to be done, and an estimate of the time required to complete such work.

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As you know, you may submit a request for expert assistance *ex parte* under R.M.C. 703(d), provided that you can demonstrate that *ex parte* consideration is necessary to insure a fair trial. See *Garries*, 22 M.J. at 291 (interpreting identical language in R.C.M. 703(d) and finding inherent authority for a military judge to consider such requests *ex parte*, "in the unusual circumstance where it is necessary to insure a fair trial"); *U.S. v. Kaspers*, 47 M.J. 176, 180 (C.A.A.F. 1997). Indeed, you have submitted several such requests *ex parte* in the past, asserting the need to insure a fair trial. Finally, I note that you did not request *ex parte* consideration in your first request for Mr. Assed's services dated January 23, 2012.



Paul Oostburg Sanz
Convening Authority
For Military Commissions

Attachment:
As stated

cc:
CDR Lockhart

ATTACHMENT

E

MEMORANDUM FOR THE CONVENING AUTHORITY

SUBJ: DEFENSE REQUEST FOR ADDITIONAL FUNDING FOR DEFENSE EXPERT CONSULTANT MR. AHMAD ASSAD ICO *UNITED STATES V. AL-NASHIRI*

1. The defense respectfully requests the approval of 175 additional hours (\$125/hr) so Mr. Ahmad Assad may continue assisting the defense in this case.
2. Mr. Assad's assistance is needed to continue the development of the mitigation evidence in this case. As discussed in our previous requests for Mr. Assad as well as other requests for expert assistance, Saudi Arabia is an extremely closed society in which religion plays an overarching role in every area of society. The way in which Saudis go about their daily lives is quite different in many regards than life in the United States. One must have more than a rudimentary understanding of Islam and its impact on the way Saudis conduct themselves in their personal and professional lives in order to effectively—and without being offensive—interact in manner necessary for a successful mitigation investigation.
3. The interactions with Mr. al Nashiri's family as it relates to mitigation require a level of awareness and sensitivity that does not come naturally for Westerners. The interplay of religion and its impact gender-roles is hugely significant. Men are just "more able" to get the job done, gain ground and be heard than women. Furthermore, the whole concept of mitigation is difficult to explain and for the family members to fully comprehend given the societal differences. Additionally, Mr. al Nashiri's family members are Saudis of Yemeni descent, which creates an added layer of difficulty. Building rapport, developing the family's trust and maintaining communication with them is critical to a success mitigation investigation.
4. Mr. Assad has been critical in assisting the defense with developing rapport and goodwill with Mr. al Nashiri's family. Should he no longer be able to assist the defense, the loss would be devastating. Furthermore, Mr. Assad is the linchpin of the defense mitigation effort in Saudi Arabia. As a male, a Muslim and someone who is more informed of the cultural considerations of the region in general, Mr. Assad has an ability to accomplish tasks and negotiate with the various parties, including Saudi officials who have been tasked with assisting the team with its mitigation investigation, that other

members of the team simply cannot replicate. In many ways, the relationship Mr. Assad had developed with Mr. Nashiri's family and with the Saudi officials in one of inherent trust, respect and mutual understanding; loss of those relationships would completely undermine the mitigation efforts in Saudi Arabia.

5. Mr. Assad's continued assistance is necessary to the defense's successful development of its mitigation evidence in this capital case. As we have expressed in each of our requests for funding of our mitigation specialist, collecting and compiling evidence and developing the client's life history for presentation to a jury is a fluid process—one which is ongoing throughout each phase of trial. In this case a significant portion of that story "lives" in Mecca, Saudi Arabia. It is a sacred place that our non-Muslim mitigation specialist—indeed all of our attorneys as well—are not able to enter. Mr. Assad has offered invaluable assistance by being about to Mecca, exploring that part of Mr. Nashiri's life that is so critical to his mitigation case.

6. It is anticipated that Mr. Assad *may* be tasked to do the following: continue to assist the defense by participating in periodic phone calls with Mr. Nashiri's family; assist Mr. Nashiri's family and the defense as the defense seeks permission for Mr. Nashiri's family to come to the United States to meet with counsel, observe the court proceedings and testify during Mr. Nashiri's trial, now set for February 2015. Mr. Assad may also be asked to accompany counsel on a trip to either Saudi Arabia¹ or Dubai to meet with Mr. Nashiri's family and prepare them to testify in the event that they are precluded from coming to the U.S. to testify in Mr. Nashiri's trial. The preparation for testimony of family to be presented in a penalty phase is very time consuming because it deals with issues that do not ordinarily appear to be important especially to people of another culture. It cannot ethically be done by telephone, SKYPE or via other web-based communications. Preparing testimony of Mr. al Nashiri's family cannot be accomplished solely by learned and detailed defense counsel due to language and cultural differences. Mr. Assad's language fluency, cultural awareness and status as a male in the Saudi society facilitate the continued development of this mitigation evidence for defense. Mr. Assad's assistance is critical in this aspect of defense preparation.

7. Additional funding of Mr. Assad is critical to assist in thoroughly exploring and developing mitigation aspects of Mr. Nashiri's life story. Because of the religious and cultural issues discussed above, no other member of the defense team is able to perform that function. For these reasons, Defense requests approval of an additional 175 hours (\$125/hr) for Mr. Assad to assist the defense with its continued mitigation duties and obligations in this case.²

¹ Because the Convening Authority refused to fund a Saudi female translator, an additional trip to Saudi Arabia may be necessary especially if the trial is significantly delayed due to anticipated litigation over AE 120 (d).

² Given the complexity and the length of this case, the defense may need to request additional hours once the 175 additional hours have been used. Mitigation is an ongoing process and Mr. al Nashiri's family is in many regards a centerpiece.

Very Respectfully Submitted,

/s/ Richard Kammen
Richard Kammen
Attorney at Law
Ind. Bar No. #5064-49

ATTACHMENT

F



Convening Authority

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

JUN 05 2014

MEMORANDUM FOR MR. RICHARD KAMMEN, DEFENSE COUNSEL

SUBJECT: Request for Additional Funding for Mitigation Investigator; *U.S. v. Nashiri*

I considered carefully your request, dated May 14, 2014, for additional funding for Mr. Ahmad Assed as a mitigation investigator for the defense team representing Mr. al-Nashiri. For the following reasons, I deny your request. However, I invite you to resubmit your request with specific justification as to why the continued services of Mr. Assed are necessary.

On February 10, 2012, my predecessor approved the employment of Mr. Assed as a consultant to assist the defense in conducting a mitigation investigation, and authorized up to 275 hours of expert services at \$125.00 per hour, plus travel from the expert's home in Albuquerque, New Mexico, to Washington, D.C., and to Saudi Arabia. The defense team, including Mr. Assed, went to Saudi Arabia from February 13, 2013, to March 6, 2013, a total of 22 days.

On June 2, 2013, you requested approval of an additional 275 hours for Mr. Assed to continue his assistance with the mitigation investigation in Saudi Arabia. On June 20, 2013, I approved an additional 121 hours of funding at \$125.00 per hour for Mr. Assed to travel to Washington, D.C. to meet with members of the defense team and to travel to Saudi Arabia on a second, 10-day trip to meet with family members.

On December 16, 2013, I approved a female Arabic translator from SAIC to accompany the defense to Saudi Arabia in January 2014. However, the defense team failed to secure a visa and country clearance for the translator, so she was unable to accompany them on the trip to Saudi Arabia. The second trip to Saudi Arabia took place from January 20, 2014, through January 30, 2014.

In my June 20, 2013 memorandum, I found that you had not provided adequate justification for a third trip to Saudi Arabia. I further advised you that should you wish to request further funding, you must "clearly demonstrate the necessity for the funding, including what work has been completed up to that point, what work remains to be done, and an estimate of the time required to complete such work."

You now request an additional 175 hours of funding so that Mr. Assed may continue assisting the defense. You state that Mr. Assed "*may* be tasked" (emphasis in original) with participating in periodic phone calls with Mr. al-Nashiri's family, and assisting in seeking permission for Mr. al-Nashiri's family to come to the United States to meet with counsel, observe the court proceedings, and testify before the military commission. You also indicate that Mr. Assed "*may*" be asked to accompany counsel on a future trip to Saudi Arabia or Dubai, should Mr. al-Nashiri's family be precluded from coming to the United States to testify.



It is a well-settled rule of American criminal jurisprudence that an accused is entitled to the employment of an expert, provided they can demonstrate the necessity for the expert assistance. See *Caldwell v. Mississippi*, 472 U.S. 320 (1985); *Ake v. Oklahoma*, 470 U.S. 68 (1985); R.M.C. 703(d). Military courts have embraced this rule in a series of opinions spanning decades. See *United States v. Garries*, 22 M.J. 288, 291 (C.M.A. 1986); *United States v. Robinson*, 39 M.J. 88, 89 (C.M.A. 1994); *United States v. Gonzalez*, 39 M.J. 459, 461 (C.M.A. 1994); *United States v. Ndanyi*, 45 M.J. 315, 319 (C.A.A.F. 1996); *United States v. Bresnahan*, 62 M.J. 137 (C.A.A.F. 2005).

In demonstrating the necessity for expert assistance, the defense must show: (1) why the expert assistance is needed; (2) what the expert assistance would accomplish for the accused; and (3) why the defense counsel were unable to gather and present the evidence that the expert assistance would be able to develop. See *United States v. Gonzalez*, 39 M.J. 459, 461 (C.M.A. 1994); *United States v. Ndanyi*, 45 M.J. 315, 319 (C.A.A.F. 1996).

I find that you have not provided the specific information that is required for me to ascertain whether Mr. Assed's continued services beyond the 396 hours already approved are necessary. While I understand your position regarding Mr. Assed's value to the defense, what he might accomplish for the accused is at this point very much contingent on future possibilities rather than on actual identified requirements.

Although I deny your request for additional funding for Mr. Assed at this time, if and when you can clearly demonstrate the necessity for the additional funding, including specifics as to what services Mr. Assed will actually perform and the specific amount of time required to complete such work, I will reconsider my decision.



Paul Oostburg Sanz
Convening Authority
For Military Commissions

cc:
CDR Lockhart

ATTACHMENT

G



DEPUTY SECRETARY OF DEFENSE
1010 DEFENSE PENTAGON
WASHINGTON, DC 20301-1010

MAY 07 2014

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
DIRECTOR, ADMINISTRATION AND MANAGEMENT
CONVENING AUTHORITY OF MILITARY COMMISSIONS

SUBJECT: Equitable Resourcing of the Office of Military Commissions

- References: (a) Military Commissions Act of 2009, Public Law 111-84, 123 Statute 2190, October 28, 2009
(b) National Defense Authorization Act for FY 2014, Public Law 113-66, December 31, 2013
(c) Manual for Military Commissions, 2010 Edition
(d) Regulation for Trial by Military Commission, 2011 Edition
(e) Deputy Secretary of Defense Memorandum "Personnel Resources and Administrative Support for the Office of the Commissions – and Related Matters," May 14, 2008
(f) Deputy Secretary of Defense Memorandum "Office of Military Commissions Military and Civilian Personnel Staffing," January 8, 2014

This guidance is issued pursuant to section 1037(c) of the National Defense Authorization Act for FY 2014. This guidance shall be interpreted consistent with the references listed and any other laws and regulations governing military commissions.

I direct those with responsibility to provide resources, personnel support, and logistical support to military commissions continue to do so equitably, thereby providing the resources and support necessary for the Office of the Chief Defense Counsel and the Office of the Chief Prosecutor to perform their respective functions fully and professionally.

The fairness and effectiveness of the military commissions system depend to a significant degree on the adequacy of defense counsel and associated resources for individuals accused, and it is important that defense counsel in these matters be fully resourced. To conduct a fair, just, and transparent military commissions process necessitates our continuing commitment to dedicate sufficient resources and skilled legal professionals to both prosecution and defense. Robust administrative support is also essential to enable professional personnel involved in the commissions to focus on the mission at hand. All addressees shall assist in these efforts.

The Convening Authority is responsible for ensuring that the Office of the Chief Defense Counsel and the Office of the Chief Prosecutor receive equitable resources and support for conducting their respective duties in connection with military commissions. The Convening Authority shall order that such investigative or other resources be made available to defense counsel and the accused as deemed necessary by the Convening Authority for a fair trial. Such orders by the Convening Authority shall be implemented fully and in a timely manner by requisite



OSD004280-14

DoD components, consistent with paragraph 2-4 of the Regulation for Trial by Military Commissions. The Secretaries of the Military Departments shall continue to fully support the personnel requirements of the prosecution, defense, and trial judiciary, as well as, where appropriate, provide other requested assistance and support. They shall also support the personnel requirements of the Office of the Convening Authority as validated by the General Counsel of the Department of Defense. As previously directed, the Washington Headquarters Services, under the Director, Administration and Management, will continue to be responsible for providing the full spectrum of administrative and logistical support, to include information technology and security, to the prosecution and defense and shall treat both equitably in doing so.

The Chief Defense Counsel and Chief Prosecutor shall inform the Convening Authority of all requirements for personnel, office space, equipment, and supplies to ensure the successful functioning and mission accomplishment of their respective offices. The Chief Defense Counsel shall provide the Deputy General Counsel (Personnel and Health Policy) of the DoD an information copy of such requests. Both the Chief Defense Counsel and Chief Prosecutor shall detail judge advocates, or comparably qualified civilians, who are assigned to or performing duties within the respective offices to perform the duties of detailed defense counsel or trial counsel respectively. In any case in which trial counsel makes a recommendation to the Convening Authority that a charge be referred to a capital military commission, the accused has the right to be represented by at least one additional counsel who is learned in applicable law relating to capital cases.

A handwritten signature in black ink, appearing to read "R. H. O. J. P.", is centered on the page.