

MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY

UNITED STATES OF AMERICA

v.

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

AE 616G(WBA)

**Mr. bin 'Atash's Notice of Conflict Affecting
Representation of Mr. bin 'Atash's Interests in
Examining Witnesses and Presenting Argument
in the AE 350/616 Series**

25 January 2019

1. **Timeliness:** This Notice is timely filed.

2. **Facts:**

a. On 13 December 2018, this Commission ordered the Government to produce a witness referred to as "Interpreter" to testify during the hearings scheduled for 28 January to 1 February 2019, but specifically via video teleconference during a closed session, pursuant to R.M.C. 806. (AE 350RRR)(ORD) at 10).

b. On 20 December 2018, Defense Counsel for Mr. bin 'Atash learned of FBI investigation into Defense Counsel and Defense Team actions performed as part of Mr. bin 'Atash's representation. (AE 615(WBA) at 13-16). It is possible that other agencies are coordinating with the FBI in this investigation. Defense Counsel have no way to know.

c. Defense Counsel for Mr. bin 'Atash possess no information pertaining to why and what the FBI is investigating related to their representation of Mr. bin 'Atash. Despite filing AE 615(WBA) on 9 January 2019 and advising the Commission and the Special Review Team of the existence of the potential and/or actual conflict, no information about the investigation has been provided to Counsel. This Notice specifically incorporates herein the information detailed in Section 5 "Facts" of AE 615(WBA).

d. Defense Counsel for Mr. bin 'Atash are afraid of pursuing Mr. bin 'Atash's interests in

exposing FBI misfeasance and malfeasance its handling of the 9/11 investigation and its treatment of Mr. bin ‘Atash from his capture until the present. Defense Counsel reasonably believe that questioning FBI representations, work-product, investigative procedures, and interrogation policies and methods will subject them to further investigation and scrutiny by the FBI. Defense Counsel reasonably believe that advocating for disclosure of information that the FBI has attempted to hide from the public will subject them to further investigation and scrutiny by the FBI. Most importantly, with respect to the testimony of “Interpreter,” Defense Counsel reasonably believe that exposing the FBI and CIA policies that use “investigation” to undermine defense team effectiveness and to learn about defense strategies will invite further FBI “investigation.” These fears have particular resonance given the subject matter of the testimony of the Interpreter.¹ Moreover, the Government and various law enforcement and intelligence agencies have an expressed interest in keeping this testimony out of the public domain.

e. Consequently, Defense Counsel for Mr. bin ‘Atash decline to examine and/or question any witness called to offer testimony regarding the issues presented in the AE 350 series. Specifically, Defense Counsel for Mr. bin ‘Atash decline to examine the individual referred to as the “Interpreter” who is scheduled to testify for the 28 January – 1 February hearings. The conflict described in AE 615(WBA) inhibits zealous advocacy and Defense Counsel have assessed that examination of the witness on the issues identified by the Military Judge—namely, the extent of Government agency intrusion into the Defense function—is likely to provide the FBI additional impetus for their investigation into Mr. bin ‘Atash’s defense team.

f. Until Defense Counsel for Mr. bin ‘Atash are assured that they are no longer subject to law

¹ AE 611L(WBA), Attach. B (Additional Details Regarding AE 350 Series).

enforcement or security clearance investigation, Counsel will not represent Mr. bin 'Atash's interests in any argument or witness examination that could affect the current FBI infiltration into Mr. bin 'Atash's case. Additionally, Mr. bin 'Atash's Defense Counsel will not provide the FBI information that might assist in the ongoing investigation of Mr. bin 'Atash's defenses and his defense team.

g. As of the date of this Notice, Mr. bin 'Atash is represented by Ms. Cheryl T. Bormann (Learned Counsel), Mr. William J. Montross, Jr. (Detailed Defense Counsel), Mr. Edwin A. Perry (Detailed Defense Counsel), and Major Matthew H. Seeger (Military Counsel) as counsel of record. Counsel are also assisted by Capt Simon Caine, an uncleared military counsel, who was detailed to the defense team representing Mr. bin 'Atash in September 2018.

3. Attachments:

A. Certificate of Service

4. Signatures:

/s/
CHERYL T. BORMANN
Learned Counsel

/s/
EDWIN A. PERRY
Detailed Defense Counsel

/s/
MATTHEW H. SEEGER
Major, USA
Detailed Military Counsel

/s/
WILLIAM R. MONTROSS, Jr.
Detailed Defense Counsel

Attachment A

CERTIFICATE OF SERVICE

I certify that on 25 January 2019, I electronically filed by email with the Trial Judiciary, AE 616G(WBA), Mr. bin 'Atash's Notice of Conflict Affecting Representation of Mr. bin 'Atash's Interests in Examining Witnesses and Presenting Argument in the AE 350/616 Series, and served a copy of the attached motion on all counsel of record.

/s/

CHERYL T. BORMANN
Learned Counsel