

**MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY, CUBA**

<p>UNITED STATES OF AMERICA</p> <p>v.</p> <p>ABD AL HADI AL-IRAQI</p>	<p>AE 232H</p> <p>Defense Notice of Judicial Voir Dire Pursuant to AE 232 (Docketing Order)</p> <p>10 May 2023</p>
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1. Timeliness

This Notice is timely filed pursuant to AE 232.

2. Defense Notice

The defense files this notice of judicial voir dire pursuant to paragraph 8.a of AE 232.

Nashwan al-Tamir proposes the following questions for judicial voir dire:¹

- a. **Current Assignment.** The defense does not have a copy of the military commission judge's biography, and therefore requests information about COL Pritchard's current assignment.
 - a. Where are you currently stationed?
 - b. What are your duties and responsibilities there?
 - c. How much longer will you be stationed there?

¹ Depending on the military commissions judge's answers, the defense asks for the right to supplement with follow-up questions. By the same token, depending on the answers, the defense may determine that some of these questions are not necessary.

- d. If overseas, will your overseas assignment impact your ability to preside over this commission through at least June 2024?
- b. **Previous appointment to preside over a military commission.** You were the first judge assigned to preside over *United States v. Encep Nurjaman, et. al.* Why were you reassigned?
- c. **Contact with the Parties.**
- a. Do you know any of the attorneys, paralegals, analysts, investigators, linguists, or others working on the prosecution or defense?
- b. Do you know any of the following individuals?
- i. Chief Defense Counsel, BG Jackie L. Thompson, Jr., USA?
 - ii. Chief Prosecutor, RDML Aaron C. Rugh, USN?
 - iii. Former Chief Prosecutor for the Military Commissions, BG (Ret.) Mark S. Martins, USA?
 - iv. Former Chief Defense Counsel, BGen(Ret) John Baker, USMC?
 - v. Do you know or have you had contact with any of the former military commission judges assigned to this commission (CAPT John K. Waits, USN; Col Peter S. Rubin, USMC; LtCol Michael D. Libretto, USMC; LtCol Michael D. Zimmerman, USMC; LtCol Michael D. Rosenow, USAF)?
 - vi. The current Convening Authority, COL Jeffrey Wood, USA?

d. Potential Conflicts of Interest

- a. Do you know anyone who was killed or injured in the War in Afghanistan? If yes, what is/was your relationship with that individual? What were the circumstances of their death or injury?
- b. Do you know anyone who was killed or injured in the Iraq War? If yes, what is/was your relationship with that individual? What were the circumstances of their death or injury?
- c. Have you or anyone you know been a victim of a terrorist attack?
- d. Have you ever spoken or written publicly or expressed your opinions about the Rendition Detention Interrogation program, the Guantanamo Bay detention camp, the prosecutions at Naval Station Guantanamo Bay or any of the men held at the detention camp?

e. Deployments.

- a. Please describe the nature of your deployments to Afghanistan and Iraq.
- b. Was anyone close to you killed or maimed during those deployments?
- c. Were you involved in the investigation of any VBIED or IED attacks?
- d. Will your experiences while deployed prevent you from presiding over this commission in a fair and impartial manner?

f. Religion.

- a. Are you familiar with Islam?

- b. Do you have any friends, acquaintances or family members that are practicing Muslims?
- c. Are you able to treat a practicing Muslim in a fair and impartial manner?

g. Retirement

- a. Are you retirement eligible? Do you have any plans to retire? If so, when?
- b. Since your assignment to this Commission, have you been advised of any policy related to conflicts of interest in future employment in the Trial Judiciary? If so, what is your understanding of that policy?
- c. Are you in the zone for promotion?

h. Potential Logistical Constraints.

- a. Do you have access to a SCIF?
- b. Do you have secure means to communicate with the trial judiciary and the parties?
- c. How will you go about reviewing proposed M.C.R.E. 505 summaries and substitutions in this case if you are not based in the National Capital Region?
- d. What role do you intend for yourself (as opposed to your legal advisor) in reviewing proposed M.C.R.E. 505 summaries and substitutions?

i. D.C. Circuit Mandamus Ruling.

- a. Have you reviewed the D.C. Circuit opinion issued with respect to this commission in 2021?
- b. What is your understanding of that ruling?

- c. How will you familiarize yourself with the voluminous record in this commission?

j. Medical Knowledge.

- a. What, if any, medical training do you have?
- b. What experience or training do you have litigating medical issues?
- c. What experience or training do you have litigating disability accommodations?
- d. Do you have familiarity with cauda equine syndrome or spinal disease? If so, please describe?

k. SERE.

- a. Do you have experience with solitary confinement or isolation techniques? If so, please describe?
- b. Have you experienced SERE training?
- c. Do you have experience investigating, litigating, or presiding over controversies surrounding the physical or mental coercion of an accused?

l. Potential Conflicts of Interest WRT Family Members.

- a. Do any family members or close acquaintances work for any of the parties to this commission?
- b. Do any family members or close acquaintances work for the Central Intelligence Agency, the Federal Bureau of Investigation or the Department of Justice National Security Division, or any other federal office or agency implicated in this commission?

- c. It is our understanding that your father was a high-level official in the administration of President George W. Bush. Litigation in this case implicates policies of that administration. Would this familial relationship impede your ability to weigh those policies fairly and impartially?
- m. **Complaints.** Have you ever had any complaints filed against you as a military judge? As a lawyer? To an Inspector General?
- n. **Miscellaneous.**
- a. Do you have any concerns about your ability to preside in a fair and impartial manner over this commission?
- b. Is there any reason that Mr. al-Tamir or a neutral observer would have any concerns about your ability to preside in a fair and impartial manner over this commission?

3. Attachments

- A. Certificate of Service, dated 10 May 2023.

Respectfully Submitted,

//s//
SUSAN HENSLER
Lead Defense Counsel

//s//
KARIN KISSIAH
Detailed Defense Counsel

//s///
MORGAN N. ENGLING²
Maj, USAF
Detailed Defense Counsel

//s//
JESSICA CASCIOLA
CPT, USA
Detailed Defense Counsel

² While Maj Engling remains detailed counsel, at the time of this filing Maj Engling held no role in drafting, editing, or submitting this filing for review. She separated from active duty, was released from the MCDO, and was read off relevant programs. She is now pending on-boarding as a reservist in a new duty location abroad.

ATTACHMENT A

CERTIFICATE OF SERVICE

I certify that on **10 May 2023**, I caused **AE 232H, Defense Notice** of Judicial Voir Dire Pursuant to AE 232 (Docketing Order), to be filed with the Office of the Military Commissions Trial Judiciary and served on government counsel of record.

//s//

SUSAN HENSLER
Lead Defense Counsel