

Military Commissions: About Judge Colonel Shane Cohen

Colonel Shane Cohen,¹ detailed 3JUN2019, is the fifth judge to preside over the Military Commissions pre-trial and trial hearings for Khalid Sheikh Mohammad and the 9/11 conspirators. He follows Colonel Ralph Kohlmann (1MAR2007-NOV2008?), Colonel Stephen Henley (NOV2008?-17MAR2010), Colonel James Pohl (8APR2012-AUG2018), and Colonel Keith Parrella (27AUG2018-JUN2019). He authorized and underwent voir dire during the morning of 17JUN2019.



**Judge Colonel Shane Cohen
Voir Dire**

Question Summary	Answer Summary
Where were you on 9/11 and what impact did it have on you?	Judge was at an orientation course for air force detailing. Felt shock and uncertainty, but no strong emotional reactions.
When you heard more about it, how did you react? Anger? Revulsion?	Judge felt no anger, only shock.

¹ Biography tendered to the court at [https://www.mc.mil/Portals/0/pdfs/KSM2/KSM%20II%20\(AE001D\).pdf](https://www.mc.mil/Portals/0/pdfs/KSM2/KSM%20II%20(AE001D).pdf).

Did you suffer any property damage or loss?	Judge reported no. Stated no family was impacted and that he was stationed in Turkey.
Did you know anyone killed?	Judge recalled no-one who was a friend, but grants there may be some distant connection he is unaware of having.
Is there anything you have not disclosed?	Judge said no.
How long have you known of this case assignment?	Judge stated awareness of the possibility in April, but that he received official notice in late May.
Only a few weeks ago?	Judge affirmed. Judge noted that the Air Force had been intent on the 9/11 commission becoming his primary responsibility, including pledge to reduce his other workload if necessary.
Have you been read onto the Special Access Programs (SAPs)?	Judge affirmed, since May.
Have you undertaken discovery review?	Judge only undertook review to be prepared for the nearest sessions, so far, as the archive was very large and his detailing was recent.
Do you intend to understand all of the caselaw?	Judge affirmed, but stated that he would not be reconsidering rulings in absence of motions filed to do so.
Were you given the opportunity to turn this down?	Judge stated that he was asked if there was a reason he could not perform as the judge, and that he had concluded, after careful consideration, that there was not.
Are you here voluntarily, not under protest?	Judge indicated voluntary presence.
Will anyone be evaluating you?	Judge will receive an annual performance evaluation by people not associated with the military commissions.
Are there any events or people who might interrupt you as the judge?	Judge noted that all detailing is up to the Judge Advocate Generals, but he hoped that the JAG will leave him in place. Stated his mandatory retirement is not for 9 years.

Has anyone made any representations about the duration of your service?	Judge said no.
Has anyone discussed this case with you?	Judge discussed the case with his trial staff, but had avoided substantive discussions of evidence.
Have you conversed with Col. Spath?	Judge met Spath as part of the hand-off, and when he was at the chief trial counsel trainings.
Have you attended the National Judicial College?	Judge listed times and places when he attended the National Judicial College or a training associated with the National Judicial College.
Did Spath comment on the OMC?	Judge recalled no discussion of the commissions.
Did Spath disparage MCDO?	Judge described Spath as “tight-lipped.”
Did Spath rate you?	Judge noted that Spath had been in the rating chain, but that the man had retired before completing the evaluation.
Did any of the above apply to Col. Shelly Schools?	Judge said Schools was a rater in reserve, but they never discussed the military commissions to his knowledge.
Did you read the Nashiri opinion about Spath?	Judge affirmed, and stated that it reinforced his intent to disclose and to be forthcoming.
Do you know of a general sentiment about OMC?	Judge was not aware.
Have you received training on military commissions?	Judge read books and spoke with his team, but held no formal training. Formal training does not exist.
Are you aware of the specifics of military commissions?	Judge asked his team for all of the casebooks pertaining to military commissions, including back to Revolutionary and Civil Wars, and was reading through them.
Have you been trained in classified information?	Judge trained in handling, declassification, and classification reasons and markings.

Do you have experience with the 505 process?	Judge was reviewing the requirements of the 505 process, but had not yet completed it.
Is there training in the 505 process?	Judge stated that there was no course.
Have you any experience with unlawful influence?	Judge stated experience ruling on the issue.
Do you have any involvement with the Vargas case?	Judge denied any involvement with the case, or any of the people connected.
Would you change anything in your scholarly article about voir dire?	Judge confessed that he had not re-read his work recently, but of what he recollects, he would not make any changes.
Has anyone pressed you to move the military commissions process or the pre-trial process faster?	Judge said no.
Have you been part of detainee operations?	Judge reported liaising with the central court of Iraq, but has not handled detainees. He explained the liaising process, then asserted, "I am a process person." He voiced the philosophy that if the process is followed, the outcome is just. He qualified that the Central Criminal Court of Iraq was only unclassified information, and not related to the military commissions case.
What does "I'm a process person" mean?	Judge stated that, as he had performed both as prosecutor and defense, he knows what it is like. As a judge, he considers his responsibility to be to make the process fair and follow the law.
Have you been a counsel on a capital case?	Judge answered no, though he had received training on capital cases.
Is there a separate jurisprudence for capital cases?	Judge said he had been reviewing the recent supreme court cases addressing that question.
Are you familiar with the requirement for heightened reliability?	Judge agreed that he was familiar with the hyper-due-process for capital cases.

Are you aware of mitigation?	Judge cited his training in mitigation and aggravation, and noted that there is broad leeway for a judge in allowing mitigation.
What caselaw did your team give you from 1800?	Judge stated there were some applicable military commissions cases.
Did you read about unlawful influence for this session?	Judge stated that he chose to prepare for the day's motions, and unlawful influence had not been on the planned order of march.
Can unlawful influence be a cumulative process?	Judge confirmed the cumulative nature of some forms of unlawful influence, per recent caselaw.
Have you read Pohl's and Parrella's rulings on substitution?	Judge had not read those rulings yet.
When you are dealing with a staff that has preceded you in this case, how will you determine if a draft ruling is accurate?	Judge pledged to read all source material pertaining to every draft ruling, to double-check.
Have you ever presided over a multi-defendant case?	Judge stated that this 9/11 military commission will be his first joint case, and he intends to proceed with care for the law.
Could you leave this case prior to 9 years?	Judge affirmed that departure was possible, per the JAG's detail, but he intends to remain unless detailed away.
How long will you stay?	Judge did not have any knowledge of a particular duration, but expressed hope to stay for the foreseeable future.
Is there a portion evaluating use of government funds in annual rating?	Judge stated that there was no specific portion so delegated on the rating sheet. Stated saving government money is not a factor in an evaluation.
Are you aware many people are frustrated with the military commission?	Judge affirms.
Do you feel pressured by this frustration?	Judge answers in the negative.
How did you know I was coming on the rotator flight, and intended to talk with my	Judge was informed by his staff that the planned 802 meeting might not be feasible,

client, but was prevented by the delay? Is this another instance of government spying on defense teams? (Harrington.)	given the rotator's lateness, and extrapolated that Harrington needed to talk with his client, and was delayed.
Did you know that torture is a thing?	Judge was aware, and affirmed that it would be argued.
Have you done any research on torture?	Judge said no.
Do you have any opinions on Israel?	Judge said no. Stated that he is a member of the Church of Jesus Christ of Latter Day Saints, and is not Jewish despite his name.
Have you discussed this case with anyone?	Judge stated that the extent of his knowledge prior to being detailed was that cases were happening.
Did you or any of your military colleagues advocate punishing the 9/11 terrorists?	Judge stated that if it had been advocated in his hearing, it had not made an impression.
Do you have an opinion about if the Constitution applies to the 9/11 military commissions?	Judge had not yet decided.
Do the Geneva Conventions apply?	Judge had not yet decided.
Does your experience in Iraq impact your partiality?	Judge said no. Stated that he does not get emotionally attached to cases, only to the weight of sentencing.
What was the timing with your detail and Parrella's rulings?	Judge explained that Parrella rendered rulings during the days after Cohen was detailed on the basis of Parrella's experience of the arguments underpinning the rulings.
Do you know Parrella's rulings?	Judge was uncertain whether he had or not.
When do your current orders complete?	Judge said there was no expiration date on his orders.
Not three years?	Judge stated that Congress desired judges to remain in place longer than 3 years.
Did you consider how this case would impact your career?	Judge said he does not expect this case to impact his career.
Have you training in the law of armed conflict?	Judge affirmed, somewhat regularly but not formally.

Did you know that people were being charged in 9/11?	Judge admitted to knowing that five people had been charged, but stated he did not know the names.
Did you receive any briefings about trial counsels?	Judge said he received pictures and names, but had not received any briefings on styles or personalities.
Do you have any pending applications for civilian employment with the government?	Judge said no.

Note: Several unreported questions asked about the judge's awareness of particular named counsel and administration personnel. Cohen responded in the negative for most, and the affirmative for some as unfamiliar acquaintances.

Neither the prosecution (government) nor the defense teams elected to challenge the judge.

See: Judge Colonel Shane Cohen Voir Dire, UNOFFICIAL/UNAUTHENTICATED TRANSCRIPT, pp. 16-123 (23086-23189):
[https://www.mc.mil/Portals/0/pdfs/KSM2/KSM%20II%20\(TRANS17Jun2019-MERGED\).pdf](https://www.mc.mil/Portals/0/pdfs/KSM2/KSM%20II%20(TRANS17Jun2019-MERGED).pdf)