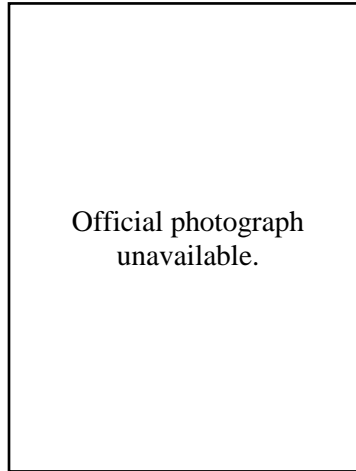


**Military Commissions:**

**Judge Colonel Lanny J. Acosta, Jr.  
Voir Dire**



Colonel Lanny J. Acosta Jr.,<sup>1</sup> detailed 12FEB2019,<sup>2</sup> is the fourth judge to preside over the second Military Commissions proceeding for Abd Al Rahim Hussein Muhammed Abdu Al Nashiri. He follows Colonel James Pohl (detailed 28SEP2011), Colonel Vance H. Spath (detailed 10JUL2014), and Colonel Shelly W. Schools (detailed 6AUG2018). He authorized and underwent voir dire during the morning open session of 3DEC2019.

**Voir Dire**

| <b>Question Summary</b>                                                                | <b>Answer Summary</b>                                                                                                 |
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| Do you know [individually named members of the government and defense teams]?          | Judge recognized some team members from military legal courses but held no serious social engagements or connections. |
| Will General Martins' rank as a brigadier general impact your ability to make rulings? | Judge said no.                                                                                                        |

<sup>1</sup> Biography tendered to the commission at [https://www.mc.mil/Portals/0/pdfs/alNashiri2/AI%20Nashiri%20II%20\(AE302C\).pdf](https://www.mc.mil/Portals/0/pdfs/alNashiri2/AI%20Nashiri%20II%20(AE302C).pdf).

<sup>2</sup> Detailing memorandum tendered to the commission at [https://www.mc.mil/Portals/0/pdfs/alNashiri2/AI%20Nashiri%20II%20\(AE302B\(MJ%20Detail%20Memo\)\).pdf](https://www.mc.mil/Portals/0/pdfs/alNashiri2/AI%20Nashiri%20II%20(AE302B(MJ%20Detail%20Memo)).pdf).

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| Do you know the former judge on the Nashiri case, Col. Spath?                                                               | Judge recalled meeting Spath at judge training, and once at a restaurant, but only exchanged passing greetings.                                                                                                                                   |
| Will you have any difficulty making rulings that might differ from Spath's?                                                 | Judge said no.                                                                                                                                                                                                                                    |
| What sorts of cases did you handle as Special Assistant to the United States Attorney in Washington, D.C.?                  | Judge responded that during his year assigned as the SAUSA all cases were civil, none criminal, and mostly comprised of FOIA/PA cases and torts. He never saw or handled anything involving terrorism or the USS <i>Cole</i> .                    |
| Are you aware of the media reporting on the Nashiri case, or have you formed any opinions based on the media reporting?     | Judge is minimally aware that the media has been reporting on Nashiri, but he does not look for the reporting or formed opinions. Mostly, he is aware of the media because he was informed that a story was published about a ruling he had made. |
| Have you applied for any positions with the DOJ or outside the army, in anticipation of future retirement?                  | Judge applied for some jobs in his home state in 2000 but did not take them. He also applied to Mississippi State University in 2018 but was declined. He has not applied for any jobs with the Department of Justice.                            |
| Do you have any ongoing personal relationships with high-level members of the DOJ?                                          | Judge answered that he had maintained friendships with several people he had worked with as SAUSA but has curtailed that in considering his responsibilities in the Nashiri case.                                                                 |
| Have you, your family, or your friends been a victim in any case like the Nashiri case?                                     | Judge said no.                                                                                                                                                                                                                                    |
| Is there anything in your past or present personal or professional life that would prevent the application of impartiality? | Judge said no.                                                                                                                                                                                                                                    |
| Do your views on the death penalty impact the way you will rule on this death penalty case?                                 | Judge said no.                                                                                                                                                                                                                                    |

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| <p>Have you handled a death penalty case as a prosecutor, defense lawyer, or judge?</p> | <p>Judge was supervising prosecuting attorney for two capital cases that were pled to remove the death penalty. He did not argue the cases but did attend the trials. The cases were <i>United States v. Russell</i> and <i>United States v. Bales</i>.</p>                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <p>Were you part of the process that removed the death penalty from those cases?</p>    | <p>Judge participated in discussions of offers defense counsel submitted and the formulation of recommendations to the convening authority.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |
| <p>Have you had any training about the death penalty?</p>                               | <p>Judge attended the National Judicial College Capital Litigation Course shortly after being detailed to the Nashiri case. He did not independently seek out training or scholarly work on the death penalty at any time.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <p>How were you selected to judge the Nashiri case?</p>                                 | <p>Judge related that:</p> <ul style="list-style-type: none"> <li>• Chief circuit judge Col. Tim Hayes in autumn 2018 asked if he was interested in serving on the military commissions as a judge. Judge responded in the affirmative.</li> <li>• Chief circuit judge nominated judge to the chief trial judge of the Army.</li> <li>• Chief judge of the commissions, who is also the circuit chief judge at Fort Hood, TX, selected judge to serve on the commissions.</li> <li>• Judge attended the joint military judges' annual training in Tampa, FL, in February 2019 and was sworn to the commissions, then was informed he had been detailed to the Nashiri case.</li> </ul> |

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| <p>Have you written articles, given interviews, or made speeches about the death penalty or terrorism?</p>      | <p>Judge said no to the death penalty but had a conversation about the Uniform Code of Military Justice’s approach to terrorism with a person who represented previous military commissions at the University of Washington.</p>                                                                                                                                                     |
| <p>Do you have any concerns about issuing opinions that a superior might disagree with?</p>                     | <p>Judge said no. As a judge, he is required to apply the law as the appellate courts have interpreted it, and he is advised to consider the judicial opinions by other trial judges that are precedential to his trials, but the present opinions of peer and superior judges are not of moment. Judge affirmed that each judge is independent when making decisions under law.</p> |
| <p>Have you communicated with or have you any form of relationship with Judge Spath?</p>                        | <p>Judge said no, not for many years.</p>                                                                                                                                                                                                                                                                                                                                            |
| <p>Have you communicated with or have you any form of relationship with Judge Pohl?</p>                         | <p>Judge noted that Pohl used to attend the annual training, and he’d sought Pohl’s advice on non-commission issues before, but the only communication he’d had with Pohl about this case was a social “I’m heading to GTMO” comment. Judge respects Pohl but does not intend to consult with Pohl in any way that would substitute Pohl’s judgment for his own.</p>                 |
| <p>Please explain why witnesses take an oath to tell the truth, the whole truth, and nothing but the truth.</p> | <p>Judge considers the oath a way to impress upon witnesses that everything they say in court holds a burden and consequence, so this is not the time for enhancement or alteration of facts.</p>                                                                                                                                                                                    |
| <p>What does your judge’s oath require of you?</p>                                                              | <p>Judge stated that his job was to be an impartial arbiter of law, to ensure the accused has a fair trial, to ensure the trial itself follows the law, and to hold</p>                                                                                                                                                                                                              |

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|                                                                                | no personal stake in the issues or outcome.                                                                                                                                                                                                                |
| Have you seen any books, articles, TV shows, or movies about the Nashiri case? | Judge stated that he neither had the time nor the inclination to look for those materials. He deliberately avoided those materials in order to compartmentalize himself and enable impartiality.                                                           |
| Have you considered the historical impact of the military commissions?         | Judge stated he had not considered what he believed the counsel was referencing: legacy. Judge stated that his sole concern was the provision of a just and fair trial.                                                                                    |
| Have you written/read/expressed opinions about torture?                        | Judge said no.                                                                                                                                                                                                                                             |
| What was your reaction to learning of the use of torture?                      | “My only thought was, ‘I will deal with those challenges as they arise in front of me, in front of the case.’”                                                                                                                                             |
| Have you read [several named government reports]?                              | Judge stated that he had been reading what had been included in filings in the case, which contained large portions of the several reports.                                                                                                                |
| What was your reaction when you first heard of the <i>Cole</i> bombing?        | Judge recalled that he was in Fort Huachuca, AZ, at the time, but did not recall any reaction.                                                                                                                                                             |
| What Article III court matters have you appeared in as counsel?                | Judge noted several civil matters involving evidentiary hearings with multiple motions, and that he argued before the D.C. court of appeals three times, all as part of the SAUSA assignment.                                                              |
| Have you spent time in the Middle East?                                        | Judge said yes, he spent January 2005-January 2006 in Baghdad as a brigade judge advocate for the 2 <sup>nd</sup> Brigade, 3 <sup>rd</sup> Infantry Division, and then from 2014-2015 in Baghdad as a legal advisor to the Office of Security Cooperation. |

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| Do you have any knowledge about the Islamic religion?                                                                                                                  | Judge received the Army culture training that included a unit about Islam.                                                                                                                                                                                                                                                                                                    |
| On a scale from 1-10, how important is the right to confrontation in a fair trial? How important is the ability to present witnesses?                                  | Judge refused to supply numbers but stated that both rights and factors are very important and should be observed in a fair trial.                                                                                                                                                                                                                                            |
| Would a pronouncement by the Commander-in-Chief through interview, tweet, or other format ever be taken as an explicit or implicit order regarding the trial?          | Judge stated that only superior courts could order the commission to do anything. His decisions are subject to review by the superior courts, and he will follow their guidance.                                                                                                                                                                                              |
| Have you ever dealt with unlawful command influence?                                                                                                                   | Judge had been close to hearing a guilty plea when a convening authority made a comment that might appear to be unlawful command influence. Judge immediately put the comment on the trial record and offered voir dire. The prosecution and defense elected not to challenge in that case. The judge stated that he considers voir dire an ongoing obligation and necessity. |
| Would a witness's status as a member of the U.S. government create a presumption of reliability?                                                                       | Judge said no.                                                                                                                                                                                                                                                                                                                                                                |
| Have you received special training in the Law of Armed Conflict?                                                                                                       | Judge said yes, there was some training on the subject at the Judge Advocate's General's Legal Center and School.                                                                                                                                                                                                                                                             |
| Have any superior officers indicated that a failure to reach a certain decision or ruling will impact your career path?                                                | Judge said no.                                                                                                                                                                                                                                                                                                                                                                |
| Are you confident that you will be able to make sufficient time to review case materials, given assignment to Ft. Hood and the materials location in Washington D.C.?" | Judge said yes and explained that because his chief judge of the commissions is also his chief circuit judge, the chief judge understands the burden on both sides and has pledged to allow the judge time to complete this job.                                                                                                                                              |

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