

**Military Commissions:
Pre-Trial Hearings, Abd Al Hadi Al Iraqi**

Events:

Judicial Watch Inc. observed the July 13-14, 2021, pretrial hearings for the ISN 10026 Hadi Al Iraqi Military Commission from the telecast facilities at Fort George G. Meade in Maryland. Though several NGOs and members of the public were in attendance, along with a contingent of students and interns affiliated with the defense, escorts reported no media presence at Ft. Meade on either day.

The judge reported the outcomes of several 802 and 505¹ process discussions and heard arguments on a motion to retrieve a counsel who had been reassigned to a post in the Pacific Ocean during the 2020 lull in case progress, heard arguments about the reconsideration of rulings previous judges had made on the case, and spent most of both days completing Voir Dire.

The security lock-out was not pressed during these sessions. The first session was delayed initially until 10:00 a.m. and then again until 11:00 a.m., with no explanation for the delays. The hearing was then cut short at approximately 1:30 p.m. when the defense pled their client's inability to continue without his strong narcotic medication that the corpsman was not certified to carry and dispense. The second session began at 8:30 a.m. and continued until completion of scheduled arguments at 12:10 p.m. the following day.

Observations:

The ability to fully observe Hadi Al Iraqi (called Al Tamir by his counsel) was difficult. He appeared healthy, albeit sitting in an excessively padded chair, and demonstrated significant attention to and involvement in the hearing. His movements were very deliberate. When responding to questions posed by the judge, Hadi Al Iraqi made the effort to answer in English, but he had to revert to his own language when answers required more than a “yes, your honor” or “no, sir.”

Over the course of his Voir Dire, the judge demonstrated a commitment to openness about his past and neutrality within the proceedings. He established a habit of momentary pauses for contemplation, appearing to weigh his responses carefully. This is not unique among military commissions judges, but it does cause transcripts to read differently from that which is noted by direct observation, since non-verbal cues and pauses are not recorded.

The lack of media presence at Ft. Meade may be a result of the hearings now being transmitted to the Pentagon. Hearings were previously transmitted to Ft. Meade and Ft. Devons, with the Pentagon a recent addition. The Pentagon site is open to Pentagon employees and credentialed members of the media, but not to NGOs or the public. And members of the media have remarked that the Pentagon is more central to their other functions in Washington D.C. than Ft. Meade.

¹ Per prior instances, 802 and 505 processes require discussion with the judge outside of a public hearing, whether for potential sensitive information content that cannot be declassified, or for discussions of the theory of prosecution or the theory of defense which cannot be shared between the trial teams.

Arguments:

AE	Government	Defense	Judge
(None)			Judge swore in Kevin Flynn (now civilian), LTC Charles Roman, and MAJ Tiffany Johnson for the government, and MAJ Morgan Engling for the defense.
AE 007QQ			<p>Judge spoke with Hadi Al Iraqi about one of his former counsel (Mishael Danielson) who had permanently left the defense team, and asked Hadi about his understanding of what that meant and if he had truly assented to the counsel leaving permanently. Hadi affirmed his understanding and his assent.</p> <p>Judge ruled to permanently excuse the counsel.</p>
AE 007SS			<p>Judge spoke with Hadi about another former counsel (Charles Ball) who had been assigned to a ship in the Pacific Ocean. Per AE 007SS, Hadi was willing to excuse this counsel for the present hearing but wanted the judge to issue a retrieval order. Hadi confirmed that he temporarily excused the counsel.</p> <p>Judge ruled to temporarily excuse counsel, allowing later requests for relief by the defense.</p>
(None)	Government had no challenges to the judge's impartiality or assignment.	Defense had no challenges to the judge's impartiality or assignment at the time but reserved the right to challenge at a later date.	Judge received and answered questions from the government and defense teams as his Voir Dire.

AE	Government	Defense	Judge
<p>AE 185J AE 185K</p>	<p>Government noted that the D.C. Circuit Court expressly denied vacature to the defense. It stated that the order to re-review and possibly re-rule on prior parts of the record of trial was the remedy created by the D.C. Circuit Court.</p> <p>Government agreed not to block using prior rulings.</p>	<p>Defense argued that, when the judge is reviewing prior documents involved in the case, a milestone approach instead of a date approach appears more reasonable. Defense argued for vacature of the parts of the record appearing biased.</p>	<p>Judge addressed J as a defense request to change the scheduling order and K as the government's response to that request. Judge commented that both sides appear to view the issue differently.</p> <p>Judge stated his intent to look at the items of the record that the defense pointed to (and/or those the government pointed to in relation), but not the whole record unless petitioned to do so for some reason. Judge asked if the government agreed not to block review the defense requested based on prior rulings (that might or might not also require review).</p>