

**Military Commissions:
ISN 10020 Majid Shoukat Khan Pre-Trial/Pre-Sentencing Hearing
Voir Dire of Judge Col. Mark W. Milam
July 27, 2021**

Circumstances and Biography:

The Chief Trial Judge of the Military Commissions detailed Judge Col. Mark Milam to the ISN 10020 Majid Shoukat Khan trial process on May 12, 2021.¹ Judge Col. Milam rotated in to replace a judge who retired.

According to his submitted biography,² Judge Col. Milam is presently a sitting trial judge for special and general courts martial in the Air Force and the Space Force, specifically for the Eastern Circuit. He has served at various levels of staff judge advocacy around the U.S., but he has also deployed to Saudi Arabia, Germany, Kuwait, and Japan.

At the conclusion of voir dire, neither the government nor the defense found reason to challenge him or request recusal.

Voir Dire:

Questions:³	Judge's Answers:
G: Is the judge currently starting the retirement process, or has he contemplated or spoken about retirement with anybody, to date?	Judge is not eligible to start the retirement process until at least 22SEP2021 and will have at least a year beyond that date before he retires. To date, he has only discussed retirement with his wife.
G: Is the judge familiar with the “In Re: Nashiri III” case?	Judge confessed to not being good with case names and asked if “In Re: Nashiri III” was the case about post-retirement employment of judges. On confirmation, judge stated familiarity.
G: Has the judge sought or is the judge seeking outside employment from the DOD?	No. Judge stated that he intended to become a farmer in Maine. He has applied for a job as a judge or chief judge at an American Indian reservation near his intended settlement. The application is with the Wabanaki tribe. In response to clarification questions, the judge stated that he did not think that the tribe was affiliated with the United States Government in any way. He saw the advertisement for the position in the <i>Machias Valley</i> newspaper and put in his resume. He is not aware of the federal government funding the tribe or the tribal

1 Detailing document: AE001E “Military Judge Detail Memorandum” available at [https://www.mc.mil/Portals/0/pdfs/Khan/Khan%20\(AE001E\).pdf](https://www.mc.mil/Portals/0/pdfs/Khan/Khan%20(AE001E).pdf)

2 Biography: AE001F “Military Judge Bio” available at [https://www.mc.mil/Portals/0/pdfs/Khan/Khan%20\(AE001F\).pdf](https://www.mc.mil/Portals/0/pdfs/Khan/Khan%20(AE001F).pdf)

3 Questions marked “G” to signify a question from the government, and “D” to signify a question from the defense.

Questions: ³	Judge's Answers:
	judiciary, assuming instead that it's the state government, but confessed to not knowing for sure. He has not been contacted for interview.
G: Would anything about the process of applying for the job in Maine hinder the judge's impartiality in this case?	No.
G: Is the judge assigned a legal advisor or clerk?	Yes. Fred Taylor. "He's my lifeline as a legal advisor."
G: Is the judge aware of any applications Taylor has made for outside employment?	No. Per discussions between the judge and Taylor, Taylor intends to stick with the process until some of the cases are complete.
G: Is the judge familiar with the accused?	No.
G: Do any of the judge's friends or family members have a personal connection with the accused or the commission?	No.
G: Has the judge read, seen, or reviewed anything about the commission from an extra-judicial source?	Judge looked up one article that described the charges against Khan, or possibly what he pled guilty to doing.
G Does the judge remember any expressions of opinion about the commissions in that article?	No.
G: Has the judge heard anyone express an opinion about the commission?	No.
G: Is there anything in the judge's review of the article that would impair his ability to be impartial?	No.
G: Has the judge expressed any public opinions about this particular commission?	No. "Not about the commissions at all."
G: Does the judge know any members of the prosecution or defense teams?	No.
G: (Checking list of other personnel who have been part of the commission for prior relationship with the judge.)	<ul style="list-style-type: none"> • Maj. Richard Mitchell? No. • Cdr. David O'Dowd? No. • Maj. Christopher James? Judge knows that he is a judge, and may have been in e-mail contact, but has not attended any annual conferences with him so probably has not met him. • Lt. Col. Joy Primoli? Judge may have been her supervisor, but never wrote her a performance report. Primoli was part of AFAFRICA when judge was part of USAFE, so they were in at least peripheral contact. They have not been in contact

Questions: ³	Judge's Answers:
	<p>since 2011 or 2014.</p> <ul style="list-style-type: none"> • Capt. Timothy Keeton? No. • William J. Schneider? No. • Maj. Matthew Hracho? Judge recognized the name but was not sure why. Judge speculated that Hracho may have come through the AF JAG program when the judge taught there. • Maj. David Abdalla? Judge recognized the name but was not sure why. • Lt. Nathaniel Gross? No. • Lt. Michael Hosang? No. • Courtney Sullivan? No. • Brig. Gen. Mark Martins? No.
G: Of the people the judge recognized or knew, does the judge hold any opinions that might bias him during the commission?	No.
G: Would any past relationships with these people impair the judge's impartiality?	No.
G: (Checking further list of involved personnel.)	<ul style="list-style-type: none"> • Lt. Col. Jon Jackson? No. • Lt. Cdr. Tia Suplizio? No. • Lt. Cdr. Jared Henderson? No. • Brig. Gen. John Baker? No. • Col. Douglas Watkins? Judge has spoken to Watkins several times on the phone and saw Watkins at the Army JAG school in June. They shook hands and exchanged greetings, but never discussed the case. On the phone, Milam is now under the impression that Watkins was feeling him out for willingness to continue trying cases even though retirement is just over a year away. • Col. James Pohl? No. Judge recognized the name from the transcript. • Col. Tara Osborn, nee Tara Hawk? No. Judge recognized the name from the transcript.
G: Of the people the judge recognized, will any relationship or opinion color the judge's ability to amend or overturn commission orders?	No.
G: Has a family member, friend, or trusted colleague of the judge been a victim of terrorism?	No.
G: How long was the judge's first deployment in	About four months, August through December.

Questions:³	Judge's Answers:
Kuwait (2002)?	Judge recalls leaving before hostilities began.
G: What were the judge's duties during that deployment?	Judge was the SJA for the wing, which flew A-10 planes out of the Al-Jaber Air Base.
G: Did the unit that the judge supported suffer any casualties attributed to Al Qa'eda?	No.
G: Did the judge witness or investigate any situations involving terrorism or Al Qa'eda?	No.
G: How long was the judge's deployment to Qatar (2010)?	One year as a PCS.
G: What was the judge's role in Qatar?	Judge was SJA for the wing at Al Udeid Air Base.
G: What was the function of that wing?	The air base was mostly responsible for refueling multiple airframes. Al Udeid Air Base was a hub for flight in the Middle East.
G: Did that unit suffer casualties as a result of terrorism?	No.
G: Anything to do with Al Qa'eda?	No.
G: Did the judge witness any attacks that were terrorist in nature?	No.
G: Did the judge investigate any situations involving terrorism?	No.
G: Does the judge have any friends or family members that are involved in the commissions?	No.
D: Has the judge worked any issues involving GTMO or detainee affairs?	No.
D: Has the judge worked with the CIA?	No.
D: Does the judge have friends or family that worked or work with the CIA?	No.
D: Does the judge have experience with ex parte decisions or rulings in this case so far?	No. So far, decisions have been delivered to counsel. There have been no ex parte communications with any party about the case.
D: Is the judge committed to seeing this case through?	Yes.
D: Is the judge concerned that any rulings or decisions he may make in this case might have adverse impact on his future employment opportunities?	No.