

Jessie Chiasson – I am a rising 3L at University of Miami Law, originally from southern Virginia. I attended the College of William and Mary where I obtained a bachelor’s degree in Religious Studies. As someone who has studied aspects of the Military Commissions, my interest in Guantanamo Bay has been strong since I began law school. I hope to remain involved and informed for years to come.

From August 6-13, 2022, I participated as an observer sponsored by the National Institute of Military Justice at the pre-trial hearings involving the United States prosecution of Abd al-Rahim al-Nashiri, the alleged mastermind of the USS Cole bombing. The attack killed 17 U.S. sailors and injured over 40 other crew members. Al Nashiri is charged with multiple capital offenses and thus the government is pursuing the death penalty.

I traveled from Joint Base Andrews to Naval Station, Guantanamo Bay, Cuba on August 6, 2022. On that same day I received my first look at the Expeditionary Legal Complex where the pre-trial hearings in the case of United States v. al Nashiri were to take place. Courtroom II is a multi-defendant court room that was specifically designed with a separate viewing gallery for the public. Two panes of glass and a forty-second delay prevent the media and public from any classified information that may come up in open court.

The first open session of the week began at 0900 on Monday morning. After passing through multiple security checkpoints, I arrived in the gallery with my escort. Al Nashiri strolled into the court room so casually I almost missed it. He was escorted by two military guards and wore a loose, basic button up. He greeted his learned counsel, Tony Nataly, with a smile on his face and even hugged a female member on his team. When court began, I had this odd feeling. There were just three lawyers, the judge, the accused, and the ever rotating crop of military guards in the court room. The majority of the attorneys and witnesses were appearing remotely from the courtroom annex in Crystal City, Virginia. The gallery was equally sparse with only two observers (including myself), two media members, and one victim family member. The gravity of this case juxtaposed with the low turn-out was jarring.

The third week of the three week session began on August 8<sup>th</sup> with former Special Agent Amar Barguti, an investigator in Yemen who pursued leads regarding a beached boat and who bought it. Barguti claims that their interviews yielded an identification of the accused. Next was the testimony of former Air Force Office of Special Investigations Agent named Christin Lange. She was a member of the FBI “clean” team tasked with interviewing several detainees—which included al Nashiri—following their arrival in Guantanamo Bay and transfer into the Department of Defense’s custody. For context, prior to al Nashiri’s detainment in Guantanamo, he was dragged through a secret network of black sites by the CIA. During that time, he was subjected to multiple torture techniques in order to extract intelligence. Any statements made by al Nashiri and the other detainees during this time are inadmissible since they were derived from torture. The FBI team was tasked with obtaining statements from al Nashiri that would be admissible in court.

I heard the direct and cross examination of three members of this team: Lange, former Special Agent Bob McFadden and former Special Agent Steven Gaudin. The linguist from the team testified the week prior. All of them stressed the voluntary nature of the FBI interviews—how the detainees were directing the pacing and content of the conversation. Lange specifically testified that al Nashiri was excited to speak to them and was engaged in the conversation. She

confirmed a quote al Nashiri provided during this interrogation: “[al Nashiri’s] happiness would be commensurate with the number of Americans killed in an attack.”

August 9<sup>th</sup> focused on McFadden. He testified about the nature of four interviews he conducted regarding the same boat as Barguti. The entirety of his testimony this day was regarding what each witness had to say about their attempt to sell the motor. He did not testify on that day about his involvement with the FBI team.

August 10<sup>th</sup> was delayed until noon following a closed chambers conference between the defense, prosecution, and judge. The first issue taken up by the commissions during open session was a glaring conflict of interest issue with defense attorney Captain Meiser as he formerly represented Hamdan. Meiser submitted an ex parte declaration to the judge requesting to withdraw while both defense and prosecution teams argued to keep him on the case until after they litigated AE 481 and the hearsay statements in question. Following a recess, the commission decided to defer its decision and agreed to the solution of walling Captain Meiser off from the conflict. Then former Special Agent Gaudin was called to the stand. His testimony would take the remainder of the week. The government began with extensive questioning of his work in Nairobi, Kenya, after Al Qaeda’s 1998 embassies bombing.

August 11<sup>th</sup> kicked off with Gaudin again. The judge was visibly annoyed when he was informed that any overseas interaction between Gaudin and an unnamed individual—Abu Zubaydah—must take place in a closed session. The defense attorney, Katie Carmon, was equally annoyed, pointing out that Gaudin was able to discuss his interrogations of Zubayduh for a popular documentary, *The Forever Prisoner*. She continued on that everything she planned to include in her questioning during open session is from a publicly available, unclassified document. She invoked the right of the public and al Nashiri to see the testimony since the trial is meant to be as public as possible. The prosecution has no control over this, as whatever the Original Classification Authority (OCA) says, goes. The prosecutor could not even mention in open court which OCA invoked the privilege. Judge Acosta said that the commissions is one step closer to ordering the OCA into court and testifying on the witness stand.

Gaudin’s open testimony continued until around 6:30 pm. Eventually, he discusses his interaction with al Nashiri, echoing how the detainees were eager to speak to them. He testified they were well treated and that al Nashiri seemed well. Gaudin claimed that al Nashiri did not complain about his confinement in Guantanamo nor did he have complaints about the guards. Gaudin also claimed to have typed up a separate report that included abuse allegations from al Nashiri’s time in CIA custody.

August 13<sup>th</sup> began with a closed session at 0900 and an open session around 1300 which concluded at 1330. The final day was mostly a logistical discussion about where to begin when court resumes in October. The commission withheld any ruling on the testimony it had heard, and Judge Acosta called the commission into recess.