

FOR IMMEDIATE RELEASE

Brig. Gen. John Baker, Chief Defense Counsel for the Guantanamo Military Commission, Disbands the Defense Team in the USS COLE Case.

Today, Brig. Gen. John Baker, the Chief Defense Counsel for the Military Commissions Defense Organization, disbanded the trial team in the case of *United States v. Nashiri*. The circumstances surrounding this are highly classified. But Brig. Gen. Baker determined that doing so was necessary because it was no longer ethical for us to proceed.

As those following the military commissions know, there have been repeated intrusions into defense teams, which have compromised attorney-client confidentiality. This has included, in the past, microphones hidden in smoke detectors. In June, Brig. Gen. Baker learned of facts, which remain classified, that meant we could not have confidence that our communications with our client were in fact truly private. We filed a series of motions seeking to learn more. The prosecution initially advised the commission that the General's concerns did not affect the location where we meet with our client. As we were allowed to say to the US Supreme Court, however: "Petitioner's counsel then [REDACTED] contradicting the prosecution's assurances." This was followed by a series of classified rulings which placed us in the untenable position of having to advise our client that we could not visit him, but could not tell him why we could not visit him.

Because we were unsure of our ethical obligations, we sought advice from a nationally recognized expert in legal ethics. Based upon a completely unclassified description of the facts, she concluded that the Rules of Professional Responsibility obligated us to cease our participation in this case. We communicated our concerns and this opinion to Brig. Gen. Baker, who had access to all the relevant information, including classified information and the classified orders. After a thorough review of the facts and relevant law, he too concluded that it was no longer lawful for us to proceed.

As every lawyer knows, attorney-client confidentiality is the bedrock of our legal system. It is the most fundamental component of the right to counsel and it is recognized the world over as necessary for a fair trial. In short, without getting into the details of matters that remain classified, we could no longer proceed as attorney's in this case because the military commissions failed to meet this most basic requirement of a fair trial. Indeed, as Brig. Gen. Baker concluded, no self-respecting lawyer could continue to act under these circumstances. He accordingly found good cause to relieve the civilian attorneys on Mr. Nashiri's defense team. That includes myself, Richard Kammen, as well as Mary Spears and Rosa Eliades.

We have mixed emotions about this. We are angry about being placed in an ethically untenable position, disappointed in not being able to see the case through, and devastated to leave Mr. Nashiri, whom we genuinely like and who deserves a real chance for justice. The entire team gave this a lot of thought but in the end concluded that this decision was the only one available. Brig. Gen. Baker also concluded that this was the correct decision and issued the ultimate orders disbanding the defense team. The ultimate decision was his.

The military commission system is a failed experiment. It does not provide fair or transparent justice, indeed it provides secret, hidden, and hopelessly unfair procedures designed to fool the public into believing that what it is seeing is an actual trial. It is not. It is an un-American façade of a court system that cannot provide fairness. And it designed to conceal the truth about the COLE bombing and the torture the United States inflicted on Nashiri. No justice will ever come out of Guantanamo.

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