



NIMJ BRIEFS ON THE GUANTÁNAMO MILITARY COMMISSIONS

Pro Se Representation

Rulings:

- *United States v. Mohammed, et al.*, 1 M.C. 290 (2008) (Commission Ruling on Motion for Resources Necessary to Realize Sixth Amendment Right to Self-Representation)

Pro se representation refers to the exercise by a party of his right to represent himself. Three defendants in the 9-11 co-conspirator military commission have been granted leave to represent themselves.

Pro se representation does not mean that the defendant will proceed completely on his own; the military commissions still detail defense counsel to assist the defendants. The role of detailed defense counsel simply shifts to advising, rather than representing.

In the 9-11 co-conspirator case, Judge Henley stated that the three defendants allowed to represent themselves had been “fully advised” of the “many problems associated with an election to waive the right to counsel and proceed *pro se*...” *United States v. Mohammed, et al.*, 1 M.C. 290 (2008). The main problem identified was that, “as incarcerated persons they would necessarily not be in as good a position to prepare a defense as a professional attorney.” *Id.* Judge Henley went on to clarify that “[t]his is not to say that the *pro se* accused are in any way being sanctioned by the Commission for their *pro se* election. Instead, the simple reality of the situation is that there are limits on what the Government must provide to the accused under an umbrella of reasonable access to materials for the preparation of the defense.” *Id.* In so ruling, Judge Henley explained that “[r]easonable access does not equate to a right or entitlement to be placed on the same footing as a technologically state of the art law office.” *Id.* This highlights the extreme difficulty faced as a logical consequence of waiving the right to counsel, and is compounded in this instance by the language differences, foreign nature of the forum, and inability to access classified information.

Many observers surmise that there may be several reasons these defendants elected self-representation. Some believe they are a by-product of the defendants’ frustration with the system, others posit that the perception that being allowed to speak on their own behalf will be give the defendants a better platform to be heard, while still others surmise this is an attention-seeking tactic that allows them to make provocative statements. It might be a combination of all three. Even while the administration reviews detainee policy and considers the future of how terrorism prosecutions will precede, the *pro se* issue continues to be litigated in the military commissions. In some instances, the military judge must assess the mental competency of the accused to determine if the individual can adequately defend his interests.