

***Military Commissions:***  
**ISN 10019 Nurjaman, Pretrial Hearings**  
**Week of October 21-25, 2024**

*Events:*

The October 21-25, 2024, pretrial hearings for ISN 10019 Encep “Hambali” Nurjaman opened with a motion for and discussion of the former lead defense counsel withdrawing from the case. The former lead defense counsel has left the military, relinquishing his clearance, and has been removed from his classified compartments. He is now employed with an NGO that is assisting the Ukraine in setting up war crimes trial procedures while it is at war with Russia. The former lead counsel indicated several conflicts of interest represented by his current job:

1. The Nurjaman trial proceedings may take the direction of the Bali Bombings being a war crime, while the former lead defense counsel would be assisting in the prosecution of other war crimes.
2. The infrastructure being set up in the Ukraine uses many investigatory and prosecutorial practices that bear a distinct resemblance to FBI procedures, while the FBI is in an adversarial position in relation to Nurjaman.
3. The NGO employing the former lead defense counsel is being funded by the U.S. Department of State. The Department of Defense and the Department of Justice fund judicial procedures concerning the GTMO detainees. If the former lead defense counsel were to remain as part of the case, he would be receiving pay from two different federal sources.
4. The former lead defense counsel will be traveling extensively and in lengthy duration as he performs his new job. He may have limited availability to provide the committed defense that Nurjaman might require.

The former lead defense counsel believes he could perform his duties both to the NGO and to Nurjaman with minimal conflict but is concerned about being paid by two sources. He indicated that he already discussed this situation with Nurjaman and urged the judge to speak directly with Nurjaman to ascertain the detainee's comfort level.

The present lead defense counsel petitioned that the former lead defense counsel be retained on a contract basis to assist with the defense team spinning up, since the longest serving member of the defense team has only been on the team for five months, and many members were only detailed two months before this hearing. The government indicated that it would be possible to bring the former lead defense counsel back, but that it would require a lengthy investigation of the former counsel's background, current activities, and fitness to still receive the clearance and compartments that he previously held. That process would take such a duration that the defense team would likely no longer be spinning up, and the only way for Nurjaman (whose speech is presumptively classified TOP SECRET) to communicate with him in the meantime would be through legal mail.

The judge delayed ruling on the dismissal of the former lead defense counsel to allow the defense team time to ask the Convening Authority to create an appointment for him to perform paid-by-the-hour consultancy.

The rest of the week was given to presenting evidence for and arguing portions of Appellate Exhibits 0010 and 0081. Initially, the government moved to assert the Protective Order in AE 0010 to protect the names of cooperating witnesses that were about to be mentioned in evidence for AE 0081, citing that many of them live in locations where they would be vulnerable to retaliation by associates of allies of Nurjaman. The defense argued that, not only were many of the cooperating witnesses also charged with and found guilty of crimes similar to Nurjaman's, but several of them had gone on to publish books and news articles, so any danger to their lives was not something that could be prevented by concealing their names in court. The judge determined the defense to be in the right and ruled that the names of cooperating witnesses would not be concealed in proceeding with AE 0081.

AE 0081 is currently the locus of argument as to whether or not the military commissions have personal jurisdiction over the Nurjaman case. The government holds that personal jurisdiction exists because:

- The portion of the Jamiyaat Islamia that Nurjaman ran followed the orders of, took funding from, and persistently communicated with Al Qaeda.
- Nurjaman extensively and persistently targeted members of the United States government and military, members of U.S. coalition allies, and U.S. civilians.

While the defense holds that personal jurisdiction does not belong to the military commissions because:

- Nurjaman was a leader in the Jamiyaat Islamia, not a member of Al Qaeda.
- While Jamiyaat Islamia and Al Qaeda held some overlapping goals, they are neither the same organization nor related in some sort of authority bond.
- Jamiyaat Islamia aimed to establish a caliphate in Southeast Asia, and so did not act anywhere near the nexus of Al Qaeda-driven hostilities and conflict.
- Nurjaman was never in prolonged armed hostilities against the U.S., which is one of the main criteria governing personal jurisdiction.

In order to prove both Nurjaman's extensive relationship with Al Qaeda and its leadership, the duration of his hostilities toward the U.S., and his specific intent to target the U.S., the government team called two witnesses.

The first witness, former FBI special agent Francis Pellegrino, was originally working in the counterterrorism joint taskforce that investigated the 1993 World Trade Center Bombing. Since that bombing was found to have ties with Jamiyaat Islamia, he was also assigned to investigate parts of the U.S.S. *Cole* bombing, the 9-11 Attacks, and the Bali Bombings. Pellegrino's area of expertise became terrorism in Southeast Asia, and his investigations led him to be part of the indictment of KSM that forced the 9-11 mastermind to become fugitive. When Abu Bakr Bashir inherited leadership of Jamiyaat Islamia and placed Nurjaman at the head of Mantiqi 1 (division 1, in the area of Singapore, Thailand, and Indonesia), Pellegrino became one of the agents that investigated what they had done, were doing, and planned to do, with the aim being eventual prosecution for crimes. Pellegrino testified to the contents of interviews of 20-25 witnesses both in Jamiyaat Islamia and outside of it, who informed on Nurjaman's plans, activities, travels to meet with Al Qaeda leadership, orders, funding, plans, and logistical networks. Pellegrino is no longer working for the FBI except as an occasional consultant in maintaining relationships with counterparts in Southeast Asia.

The second witness, current FBI Agent Seely, works as part of the FBI Military Commissions Prosecution Unit. Though he did not investigate the Marriott Bombing at the time it happened, he is very familiar with the documents and commissions proceedings. Presently, Seely investigates and

traces the monetary transfers between terrorist groups and tracks the movements of the accused and witnesses against the timeline of events. He also testified to the contents of witness interviews that established Nurjaman's history of activities and contacts. The defense extensively cross-examined Seely on interview procedures, the voluntariness of the interviews taken, and the existence of any incentives to cooperate.

At the conclusion of witness testimony, the defense team moved to compel three witnesses, several of whom were international lawyers and judges familiar with legal jurisdictions. The facts of consequence the defense sought to have them establish were if hostilities actually existed and if the charge sheet was adequate to the jurisdiction of the case. Both the defense and the government argued over the appropriateness of compelling these persons to be witnesses, and the judge asked both how the proposed witnesses could be offering evidence rather than legal opinion. Ultimately, the judge took the unusual action of immediately ruling from the bench that the motion to compel these witnesses was denied.

On the final day of the proceedings, both the government and the defense team offered closing arguments on the subject of jurisdiction as applies to the commission trying Nurjaman. The judge listened to each side with equanimity and stated his intent to study the evidence, testimony, and affidavits extensively before making a ruling. He then queried the government on the status of its discovery obligations. The government estimated that all discovery would be produced to the defense team by March 31, 2025. The judge recessed the commission with no further comment.

*Observations:*

It is unusual for a single motion to be presented, with testimony given, and final arguments made in one week. Judges in most military commissions more often hear different stages of multiple motions throughout a week. Since the establishment of the military commission's jurisdiction is a foundational question, the judge may have believed that any other motion would be disordered before ruling on this one.

In the event that the judge rules that the military commission has no personal jurisdiction over Nurjaman and his actions, the defense posited two other venues that would perhaps have jurisdiction. The first was one of the mainland federal courts. This would present several difficulties, beginning with the congressional moratorium on housing GTMO detainees on the U.S. mainland. Instead of witnesses and counsel sometimes appearing remotely in the courtroom on island, the accused himself would have to either appear in the mainland court remotely or travel back and forth by aircraft with intensive security procedures to maintain his safety and his custody. This would directly interfere with the effectiveness of Nurjaman's participation in his own defense.

The second jurisdiction was the Indonesian courts. This would be diplomatically awkward, at best, because the U.S. petitioned to be able to try Nurjaman. The Indonesian law enforcement and court systems denied several U.S. petitions to try or take custody of other participants in the Bali and J.W. Marriott bombings but determined to rely on American reconstructive capabilities to build a proper case around Nurjaman. Returning him to the Indonesians could result in the release of Nurjaman, rather than his prosecution.

Despite being relatively new to the case, Nurjaman's defense team argues and cross examines very capably. They present their arguments in logical sequences and are thorough in accounting for details. They are also adept at maintaining a slower speaking pace so as not to overwhelm the interpreter, but it could give the impression that counsel is talking down to the judge and any observers.