

CHIEF PROSECUTOR MARK MARTINS
REMARKS AT GUANTANAMO BAY
24 MARCH 2017

Good afternoon. Today the Military Commission convened to try Khalid Shaikh Mohammad, Walid Muhammad Salih Mubarak Bin ‘Attash, Ramzi Binalshibh, Ali Abdul Aziz Ali, and Mustafa Ahmed Adam al Hawsawi completed another in a series of pre-trial sessions to resolve disputes regarding outstanding legal and evidentiary issues. Before I briefly summarize these matters, I emphasize that the charges against the Accused are only allegations. The Accused are presumed innocent unless and until proven guilty beyond a reasonable doubt. Matters under consideration by a military commission in this or any other particular case are authoritatively dealt with by the presiding judge. Any comments addressing systemic issues that are the subject of frequent questions by interested observers should always be understood to defer to specific judicial rulings, if applicable.

This week, the Commission reviewed with the parties the posture of every one of the forty-three motions that were on the docket at the start of what was a scheduled two weeks of proceedings. It heard oral argument on twenty-three motions, either resolving or taking for decision the following matters that had been fully briefed:

- Appellate Exhibit 430F (GOV), a government motion for a 24-hour delay to the commencement of the May proceedings due to operational requirements of Naval Station Guantanamo Bay. The Commission took the matter under advisement.
- Appellate Exhibit 448C (AAA), a defense motion to remove the designation of “high value detainee” from Mr. Ali’s court filings. The Commission took the matter under advisement.
- Appellate Exhibit 014L (WBA), a defense motion to modify Appellate Exhibit 014H, Protective Order # 2. The Commission took the matter under advisement.
- Appellate Exhibit 018PP (MAH), a motion in which the defense argued that the government had violated Appellate Exhibit 018U when two legal pads were removed from Mr. Hawsawi’s detention facility cell when Joint Task Force security personnel discovered the legal pads without appropriate markings and the legal pads were not placed in the appropriate receptacle for attorney-client communications. The Commission took the matter under advisement.
- Appellate Exhibit 112Q (AAA), defense motion for appropriate relief in which the defense alleged that a government request for proper handling of classified information inadvertently provided in discovery would involve destruction of evidence; the Commission indicated that it would issue a protective order in the coming days requiring the proper handling.
- Appellate Exhibit 118 (WBA, AAA), a defense motion to abate proceedings, in which the defense argued that it should receive a security classification guide so the defense would not need to coordinate with the original classification authority when

the defense generated documents that may contain classified information. The Commission took the matter under advisement.

- Appellate Exhibit 195 (AAA), a defense motion to compel production of communications between the government and the makers of the film of “Zero Dark Thirty.” The Commission took the matter under advisement.
- Appellate Exhibit 245 (AAA), a defense motion to reconsider the Military Commission’s ruling in Appellate Exhibit 036C. In Appellate Exhibit 036C, the Military Commission ruled that defense must file notice with the Convening Authority when it submits requests for expert consultants and expert witnesses as required by R.M.C. 703. The Military Commission had ruled in Appellate Exhibit 036C that the defense was required to provide *de minimis* notice. The Commission took the matter under advisement.
- Appellate Exhibit 284 (WBA), a defense motion to compel production of information related to the alleged monitoring or collection of attorney-client privileged information. The Commission took the matter under advisement.
- Appellate Exhibit 177 (WBA), a defense motion to compel discovery of information related to the government’s alleged intrusion into electronic or physical spaces containing material related to or produced by the defense. The Commission took the matter under advisement.
- Appellate Exhibit 343H (WBA), a defense motion to reconsider the Military Commission’s rulings at Appellate Exhibit 343C and Appellate Exhibit 343E. In Appellate Exhibit 343C and Appellate Exhibit 343E, the Military Commission denied the defense’s prior motions to dismiss the charges based on a theory of unlawful influence on the trial judiciary. The Commission took the matter under advisement.
- Appellate Exhibit 394 (WBA), a defense motion to compel production of unredacted International Committee of the Red Cross letters. The Commission took the matter under advisement.
- Appellate Exhibit 444 (MAH), a defense motion to compel production of Joint Task Force Guantanamo (JTF-GTMO) “Threat Assessments” and camp commander pass-down information concerning Mr. Al Hawsawi. The Commission took the matter under advisement.
- Appellate Exhibit 465, a government motion to mandate all discovery material to be relied upon during oral argument be referenced in the attachments of a filing, or in the alternative direct the defense to disclose and provide specific exhibits and/or individual presentation slides at least 48 hours prior to their use during future hearings. The Commission took the matter under advisement.
- Appellate Exhibit 466 (MAH), a defense motion for appropriate relief to establish

procedures for victim impact evidence. The Commission took the matter under advisement.

- Appellate Exhibit 473 (RBS), a defense motion to permit video communication between the accused and his brother, contrary to current security requirements within the camp. The Commission took the matter under advisement.
- Appellate Exhibit 475 (AAA), a defense motion to dismiss, in which the defense argued that Air Force enlisted service members who are assigned as defense paralegals suffer from a structural conflict of interest based on the Air Force enlisted promotion system. The Commission took the matter under advisement.
- Appellate Exhibit 480 (AAA), a defense motion for a hearing convened under Article 5 of the Geneva Convention Relative to the Treatment of Prisoners of War, to contest that Mr. Ali is an unprivileged enemy belligerent. The Commission took the matter under advisement.
- Appellate Exhibit 481 (KSM), a defense motion to compel notice of the government's intention to rely on uncharged misconduct evidence under Military Commission Rule of Evidence 404(b). The Commission took the matter under advisement.
- Appellate Exhibit 492 (MAH), a defense motion to dismiss charges IV, V, and the Additional Charge, in which the defense argued that the Military Commissions Act was unconstitutionally vague. The Commission took the matter under advisement.
- Appellate Exhibit 404 (AAA), defense motion to compel production of evidence of confinement conditions at Camp 7. The Commission took the matter under advisement.
- Appellate Exhibit 478, a government motion for the trial judge to issue a trial conduct order to establish specific dates for pre-trial milestones leading to trial proceedings in 2018. The Commission took the matter under advisement.

In addition to the motions argued in the preceding list, the Military Commission also heard a status update, but did not hear argument, regarding Appellate Exhibit 330 (AAA), a defense motion to compel production of un-redacted medical records of Mr. Ali. The military judge deferred argument on a number of motions from the docket—including Appellate Exhibits 490, 491, and 494—because the defense has not filed its final reply brief to close the briefing cycle. In Appellate Exhibits 367 and 442, the defense requested deferment, and the government did not oppose, in order to permit declassification of certain evidence. The Military Judge deferred argument in Appellate Exhibits 310, 350, and 373. And as to Appellate Exhibit 485, the Military Judge reiterated his expectation that any changes in logistical support and housing provided by Naval Station Guantanamo be properly coordinated ahead of time.

Separately, the Military Commission deferred hearing testimony from detainee Abu Zubaydah because Mr. Zubaydah's defense attorneys were unable to attend due to illness. If it

occurs, Mr. Zubaydah's testimony is now scheduled to be heard at the May session.

There were two closed sessions, totaling two hours and nineteen minutes. Overall, more than 93 percent of the hundreds of hours of pre-trial sessions of this Commission since the arraignment in 2012 have been fully open to the public. This percentage will increase upon the release of transcripts of the unclassified portions of the two closed sessions.

Last night, I had the privilege of dining with family members of the 9/11 Fallen and a first responder survivor who have been here this week. Marvin and Casser Baksh, Deborah Borza, Christine Abbott, Daniel D'Allara, James Hall, Frank Favilla, and Carson Howell—please know that your determination inspires us. Know also that we will never forget Michael Baksh, Deora Bodley, John D'Allara, and Brady Howell. We will stay with this however long this takes, until justice is done.

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The proceedings this week were only possible because of extraordinary efforts of so many technicians and logistical support staff. I commend and thank you, as I also commend and thank the Soldiers, Sailors, Airmen, Marines, Coast Guardsmen, and government civilians of Joint Base Andrews, Joint Task Force Guantanamo, and Naval Station Guantanamo Bay. We owe special recognition to those who serve in the detention facilities here. Your mission is the lawful, secure, and humane care and custody of detainees under the Geneva Conventions, and you do that mission admirably.