

**CHIEF PROSECUTOR MARK MARTINS  
REMARKS AT GUANTANAMO BAY  
13 MAY 2017**

Good afternoon. On Monday, 15 May 2017 the 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 will hold another series of pre-trial sessions without panel members present. These five Accused stand charged with plotting the attacks of September 11th, which resulted in the deaths of nearly 3,000 persons. 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.

We are honored to have family members of the 9/11 Fallen with us here this week to observe the proceedings. Rosemary Dillard’s husband Eddie Dillard perished on American Airlines Flight 77. Eddie was passionate about dominoes and whist and would proclaim himself an expert in each to anyone who would listen. Abraham Scott’s wife Janice Scott died in the Pentagon. Janice, an Army supervising budget analyst, was an avid genealogist who would drive around the southern United States tracing her ancestral roots. Darra Mulderry is the sister of Stephen Mulderry, who died on the 88<sup>th</sup> floor of the South Tower. Stephen was an NCAA basketball star who set the University of Albany’s all-time assist record in the 1989-1990 season with an average of 4.27 per game. Peter Regan is the son of first responder Donald Regan, a firefighter who earned several citations and medals for bravery with Rescue Company 3 of FDNY. Peter, a veteran of deployments as a United States Marine infantryman in Iraq and Afghanistan, is now continuing the family tradition of public service as a firefighter in New York City. James and Patricia Smith are the husband and daughter of Moira Smith, the first police officer to report to the terrorist attacks of September 11, 2001. Patricia was only two years old and holding her father’s hand when she walked across the stage at Carnegie Hall to receive the NYPD’s Medal of Honor that was posthumously awarded to her mother. Steven J. Haggis is the father of Steven M. Haggis, who died on the 105<sup>th</sup> floor of the North Tower on 9/11. Steven was active in his church, teaching both childrens’ Sunday school as well as a bible study for young married couples.

These family members are here observing the proceedings pursuant to modern laws that protect the interests of victims and their families. Their presence reminds us of what is at stake in these proceedings.

***Proceedings in United States v Khalid Shaikh Mohammad et al.***

Since the last proceedings on the record in March of 2017, there have been a number of court filings over a variety of issues. The Military Judge’s Docket Order and 2nd Amended Docket Order list 23 separate matters; these Docket Orders are available at Appellate Exhibits 500B and 500I. Some 12 motions will likely receive the bulk of attention, as most of the remainder have either been resolved or are poised for litigation in a future session. Motions

likely to be litigated this week include a defense motion to dismiss on the claim that a state of hostilities did not exist on September 11, 2001 (Appellate Exhibit 488) and a defense motion to dismiss the charges of conspiracy, hijacking, and terrorism on the claim that these offenses in the Military Commissions Act are unconstitutional *Ex Post Facto* laws (Appellate Exhibit 490). The Government's renewed motion to admit hijacker activity records into evidence, Appellate Exhibit 491, is also docketed.

On 7 April 2017, the Military Judge dismissed Charges III (Attacking Civilian Property) and V (Destruction of Property in Violation of the Law of War) on the ground that the five-year statute of limitations in Article 43 of the Uniform Code of Military Justice applied to these proceedings, and such limitations period had expired before the United States brought these two non-capital charges against the Accused. The government is appealing this ruling, having filed its Notice of Appeal on 12 April and its brief with the United States Court of Military Commission Review (U.S.C.M.C.R.) on 24 April. A joint response brief was filed by the Accused on 8 May, and the government will file a reply to that response on Monday, 15 May. A three-judge panel of the U.S.C.M.C.R.—the military and civilian first-level appellate court established under the Military Commissions Act—will then decide the appeal. Trial Judge Pohl, meanwhile, has ruled that other matters before the military commission may proceed while the government's interlocutory appeal before the U.S.C.M.C.R. is pending. Filings associated with this litigation are available on the Military Commissions website at the Appellate Exhibit 251 series and at U.S.C.M.C.R. # 17-002.

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We thank the Soldiers, Sailors, Airmen, Marines, Coast Guardsmen, and government civilians of Joint Base Andrews, Joint Task Force Guantanamo, and Naval Station Guantanamo Bay for their continuing support to these proceedings.