

CHIEF PROSECUTOR MARK MARTINS
REMARKS AT GUANTANAMO BAY
19 AUGUST 2017

Good evening. We were honored to be joined this past week by family members of a U.S. service member and U.S. civilian who were killed in Afghanistan in 2003. Jane Nelson, and Jordan and Jillian Dennis are the mother and siblings of Private Jerod Dennis, who died of wounds sustained in battle near Shkin. Cheri Carlson is the widow of William “Chief” Carlson. Chief Carlson also died in battle near Shkin later in 2003. This past Wednesday, the Military Commission convened to try the charges against Abd al Hadi al-Iraqi completed its thirteenth pre-trial session to resolve legal and evidentiary issues. Abd al Hadi is charged with committing serious violations of the law of war as a senior member of al Qaeda in a series of unlawful attacks and other offenses in Afghanistan, Pakistan, and elsewhere from 2001 to 2006. These attacks and other offenses allegedly killed or injured U.S. and coalition service members and civilians, while also destroying property.

The charges against Abd al Hadi are only allegations. The Accused is 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.

The Commission met for one day on the record, on Monday, 14 August. During that session, the Commission heard arguments in several motions that had been on the docket. At the end of Monday’s open session, the Commission held a Rule for Military Commission (R.M.C.) 806 closed session to hear arguments on motions for which both sides requested the Commission hold a closed session.

Also this week, the Military Judge served in a different role as the Deposition Officer for a R.M.C. 702 deposition of Ahmed al Darbi, a cooperating witness in the case who was previously convicted at a military commission in 2013 for offenses under the Military Commissions Act. On Tuesday and Wednesday, the Prosecution conducted direct examination of Mr. al Darbi to preserve his relevant testimony in the Hadi case. Cross-examination by Hadi’s defense counsel is scheduled to occur in October. Mr. al Darbi’s sentencing proceeding is scheduled for 7-9 September 2017.

As I noted earlier, the Commission addressed several motions, hearing a portion of oral argument for all three motions in open session and a portion of oral argument for two of the three same motions in closed session.

- Appellate Exhibit 70CCC is a Defense Motion to Compel Discovery of Unredacted Statements of Ahmed Mohammed Ahmed Haza al-Darbi. The Military Judge heard oral arguments in open and closed session for this motion. The Military Judge took the matters under advisement and subsequently issued an interim order on 17 August 2017.

- Appellate Exhibit 70FFF is a Defense Motion to Compel Discovery of Undisclosed Statements of Ahmed Mohammed Ahmed Haza al-Darbi. The Military Judge heard oral argument in open and closed session related to this motion. He then took the matter under advisement.
- Appellate Exhibit 91 is a Defense Motion to Compel a Personal Laptop Computer for the Accused's Use. The government opposed this motion. The Military Judge heard oral argument and took the matter under advisement.
- Although Appellate Exhibit 85, a Defense Motion to Dismiss the Charges Because Congress Lacks the Constitutional Power to Limit the Jurisdiction of Law-of-War Military Commissions to Non-Citizens, was originally on the docket, the Military Judge deferred consideration of this motion at the defense's request. The Military Judge also informed the parties that he was removing the motion from the docket until the defense affirmatively requested it be considered again.

In addition to matters taken up during the open and closed sessions and the deposition, the Military Judge issued several orders this past week, all having to do with the Appellate Exhibit 70 series, which relates to the deposition of Mr. al-Darbi.

The closed session held on 14 August 2017 lasted 21 minutes. Thus, of the approximately 2.3 hours of sessions over the past week, approximately 15 percent were closed. This percentage will decrease when the Commission releases the transcript of the closed session, excising only classified information. To date, the *Hadi* Commission has held two closed sessions totaling 39 minutes. Total closure comprising these two closed sessions amounts to about 1.64 percent of the almost 40 hours of proceedings to date. This means that even for a pre-trial process involving several challenges and other matters implicating classified information, approximately 98.36 percent of that process has been open to the public. Again, this percentage will increase when the Commission releases transcripts from other closed sessions. Moreover, the government is committed to ensuring that all of its evidence presented in the case-in-chief at trial will be in open court.

Proceedings in the Coming Week in United States v Khalid Shaikh Mohammad et al.

On Monday, 21 August 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, as I did in the context of Hadi al Iraqi, 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. Gil and Vera Aronow are siblings to Richard Aronow, who was an attorney with the New York Port Authority and who died on the 66th floor of the North Tower. Richard was admired for his intellect and exceptional willingness to share his knowledge and insights. Richard is also survived by his wife Laura Weinberg and their son William. Meena and Neel Jerath are the widow and son, respectively, of Prem Nath Jerath, a civil and structural engineer who survived the 1993 World Trade Center bombing but died in the 9/11 attacks. Prem was on the 82nd floor of Tower I. He worked for the Port Authority of New York and New Jersey as a Senior Project Manager. Professor Ellen Judd is accompanied by her brother, Brian Judd, and they are here in honor of Ellen's spouse, Christine Egan, a nurse practitioner and medical anthropologist/health researcher working in the First Nations and Inuit Health Branch of Health Canada. She was visiting her brother, Michael Egan, an insurance executive with Aon, whom Ellen and Brian are also here to honor, on the morning of September 11th. Christine and Michael both lost their lives in the World Trade Center. Robert and Ellen Ryan are the parents of Jonathan ("JR") Ryan, a married 32-year-old bond broker who died in the World Trade Center attack. In addition to his parents, JR was survived by his wife Maria, his then-3 year-old daughter Autumn, and his son Colin, who was born just weeks after that attack in October 2001.

We are also privileged to be joined by a survivor of the events described in the charges before this Commission. Charles Kaczorowski, a Navy Vietnam veteran whose many brushes with death included the 1993 and 2001 World Trade Center attacks, is also with us. Charlie was a Site supervisor at Ground Zero for recovery cleanup operations and spent 2,274 hours contributing to that effort. Charlie is currently suffering from pulmonary and bladder cancer. These guests observe the Commission 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.

Since the last proceedings on the record in May 2017, there have been a number of court filings pertaining to a variety of issues. The Military Judge's Docket Order lists 20 separate matters. The Docket Order can be found on the Military Commissions website (www.mc.mil) at Appellate Exhibit 519. The docket lists seven defense motions to compel production of various matters or information (Appellate Exhibits 336, 350O, 399, 444, 445, 498, and 517); two defense motions for leave to use International Committee of the Red Cross (ICRC) documents (Appellate Exhibits 108-11 and 108-13); two defense motions to dismiss—one alleging government intrusion into the attorney-client relationship (Appellate Exhibit 373), and one alleging lack of personal jurisdiction due to the absence of hostilities (Appellate Exhibit 502); one defense motion to abate the proceedings pending compliance with Protective Order #1 (Appellate Exhibit 118); one defense motion to show cause why the government, Joint Task Force camp commander, and guard force members should not be held in contempt (Appellate Exhibit 152LL); two defense motions to permanently and verifiably disable audio monitoring equipment capability in attorney-client meeting rooms (Appellate Exhibit 133RR) to gain authority to use transport van photos (Appellate Exhibit 279D); one defense motion for a deposition of an interpreter formerly assigned to Accused

Ramzi Binalshibh’s team (Appellate Exhibit 350C); one defense motion to recuse the Military Judge and current prosecution team (Appellate Exhibit 425); and one defense motion to suppress D-101, a joint public statement made by the accuseds when they were acting as their own attorneys (pro se) (Appellate Exhibit 511).

There are two government motions on the Docket: a government motion to extend the deadline to obtain classification review of materials ordered in Appellate Exhibit 396G (SUP), the Supplement to Trial Conduct Order (Appellate Exhibit 396-1); and the government’s renewed motion for a trial scheduling order (Appellate Exhibit 478).

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 that such limitations period had expired before the United States brought these two non-capital charges against the Accused. The government appealed this ruling, which was overturned by the United States Court of Military Commission Review (U.S.C.M.C.R.) on 29 June. The Military Judge promptly issued an order reinstating Charges III and V.

In the week before the U.S.C.M.C.R.’s decision, counsel for Khalid Shaikh Mohammad had filed with the United States Court of Appeals for the District of Columbia Circuit a petition for a writ of mandamus to recuse Judge Silliman from the U.S.C.M.C.R. and, later, also to vacate the U.S.C.M.C.R.’s 29 June decision. A three-judge panel of the Court of Appeals heard oral argument and, on 9 August, granted the petition, ordering recusal of Judge Silliman and vacating the U.S.C.M.C.R.’s 29 June decision. Filings associated with this litigation are available on the Military Commissions website at the Appellate Exhibit 251 series, at U.S.C.M.C.R. Case Number 17-002, and at the D.C. Circuit, Case Number 17-1156. The United States is studying the ruling and considering its options.

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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.