

Military Commissions:
Pre-Trial Hearings, 9/11: Khalid Sheikh Mohammad et al. (2)
Week of 22JULY2019-26JULY2019

Events:

Judicial Watch, Inc. observed the 22-26 July 2019 pretrial hearings for the 9-11 military commission from the telecast facilities provided at Fort George G. Meade in Maryland. The open session on Monday was attended daily by between 7 and 20 representatives of the media, NGOs, mainland members of the prosecution and defense teams, observers from the Office of Military Commissions (OMC), and observers from the Military Commissions Defense Organization (MCDO). The members of OMC and MCDO polled other attendees on the present viewing accommodations and public perception of Judge Cohen.

The motions and arguments largely focused on the nature of discovery processing, the logistics of calling and recalling witnesses, and proposed methods and schedules for establishing a trial timeline:

- AE 118 N: Prosecution explained the nature of the two teams that handle security guidance and declassification services for the defense and prosecution, why more face-to-face meetings are feasible, how the SECRET-level e-mail inbox reserved for the defense functioned, and the accountability authorities governing the teams. The defense argued for the addition of a direct phone line for instant classification answers and stated a desire for a shorter timeline. The judge directed the prosecution and defense to propose a joint solution and stated his intent to rule after reading proposed solutions.
- AE 628 B: Prosecution and defense (Baluchi) co-presented the numbers of witnesses intended for calling during the September hearings.
- AE 637: Defense moved for the judge to compel neutrality in the Convening Authority. Convening Authority neutrality came into question because the prosecution obtained one of the defense interpreter's working schedule documents as part of discovery.
- AE 635: Defense moved for the judge to compel the discovery and release of diplomatic correspondence documents discussing torture both before and after the events of 9/11. Prosecution argued for narrowing of temporal scope and type, if it is to happen at all, and asserted that "random members" of the Department of State do not necessarily represent whole U.S. Government policy in individual correspondence.
- AE 616: Defense moved for the judge to compel the appearance of a former-CIA interpreter who ended up in the defense pool of interpreters as a witness to determine if he was placed in the pool nefariously or mistakenly. Prosecution argued for either questioning by deposition or for extensive protective measures for the interpreter if he is to appear as a witness.
- AE 642: Defense moved for the judge to compel the production of government operational planning documents, in order to show the existence or non-existence of hostilities after Operation Infinite Reach and before the 9/11 events. Prosecution argued that the hostilities had been established by Osama Bin Laden's declarations and asserted that all of the discovery requested on the events had already been produced.
- AE 639 and AE 639 I: These were motions for scheduling orders, both for the calling of witnesses for suppression motions and for the setting of trial timelines. In each, the

defense generally favored the creation of a schedule based on meeting goalposts, where the prosecution favored the creation of a schedule based on hard dates.

The defense (Hawsawi) also called the JTF-GTMO Joint Commander of the Detention Group, Steven Yamashita, as a witness in arguing for greater laptop access for Hawsawi. The defense challenged that the commander did not have a full knowledge of Camp 7 security measures and could not properly evaluate the risks Hawsawi or the other detainees posed with access to laptops. The prosecution asserted that the commander is responsible for the safety of the detainees and the staff in all GTMO detention facilities and is justified in and has the authority for his determinations.

Observations:

Several of the detainees donned what appeared to be Sindhi topi and Saraiki ajrak, a combination of traditional decorated hat and block printed shawl often associated as a gift given to someone held in high esteem. Though Hawsawi always wears traditional garb, the other four accused often don military camouflage jackets. Topi and arjak can be worn to celebrate Pakistani cultures, but July is not usually the time of year they are worn in celebration; the detainees may be responding to anticipation of greater civilian viewership and media reporting, in which topi and arjak would indicate their respectability or irreproachability to members of certain Middle Eastern countries.

Judge Cohen remains committed to transparency, fairness, and progress in the 9/11 proceedings. OMC and MCDO appear committed to evaluating and expanding the viewing sites, ensuring the perceived fairness of the proceedings, and monitoring the quality and quantity of the hearings made available to the public.