

Military Commissions:
9/11: ISN 10024 Khalid Sheikh Mohammad, et. al.
January 6–17, 2025
Pre-Trial Hearings

Events:

On January 6 and 7, 2025, open sessions of the Military Commissions were canceled due to inclement weather in the Washington, D.C., area that led to the closure of federal facilities and the Remote Hearing Room (RHR) at Fort Meade for legal team members not at GTMO.

On January 8 the judge stated his intention to begin reading in the pleas for Khalid Sheikh Mohammad (KSM), Walid Muhammad Salih Mubarek Bin Attash, and Mustafa Ahmed Adam Al Hawsawi on Friday and proceeded to work through KSM defense counsel-proposed wording changes to the plea agreement stipulation of facts. These changes included verifying that the maximum amount of incarceration time was to be set at 20 years, unless someone deemed seriously injured in the 9/11 attacks is determined to have died from those injuries and specifying that KSM will plead guilty to causing the attacks but not to being the “supreme commander” of the attacks. There was some discussion about KSM writing quotations from suras (chapters from the Qur’an) on the signed stipulation of fact, stating that he had faithfully corrected the stipulation in light of the suras. The government asserted that collection of victim impact statements is likely to take a full ten months, assuming all of the pleas are accepted, and the judge acknowledged this with the caveat that a different judge would be presiding at that time. The judge then recessed the court in respect for the declared federal holiday on January 9.

On January 10 the judge called the commission to order at 9:01 a.m. He announced that the D.C. Circuit Court of Appeals had placed a stay on proceedings related to the plea agreements, so no pleas could be read in and no plea cautions discussed with KSM, Bin Attash, or Hawsawi. The judge noted that this removed the scheduled activities for the week of January 13-17, leaving only the motions arguments scheduled for Ali Abdul Aziz Ali “Balucchi” that had originally been intended for the week of 20-24 January. He asked if the Ali/Balucchi defense team was prepared to argue the motions early, but the defense counsel expressed doubts that the team could finish work on the arguments and bring all of the counsel down to GTMO the week January 13-17.

The judge then instructed that, from now on, any defense or trial counsel required for argument must be present on island for the proceedings. He acknowledged that the Remote Hearing Room at Fort Meade had been put into place to allow proceedings to continue during the pandemic and to ease the travel burden on witnesses, but he indicated that it would not be allowed to interfere with commissions hearing sessions since the GTMO courtroom was perfectly functional without it. The defense and trial counsels did not object to this directive.

After determining that no open sessions could be scheduled for the week of 13-17 January, the judge noted that he and his staff would remain on island to complete commission-related work and directed the guard staff to remain in a ready posture for supporting counsel’s use of the courtroom and RHR to work on case preparation. Defense counsel for Ali/Balucchi requested that the guard staff also facilitate attorney-client meetings.

The judge stated that the next open session would occur on January 21 and placed the commission in recess at 9:10 a.m. No unscheduled open sessions have been called for the week of January 13-17.

Observations:

When Judge McCall ruled that the Secretary of Defense did not have the authority to revoke a plea agreement negotiated by the Convening Authority, on whom the authority to negotiate had previously been placed, the plea agreements remained in effect. However, the act of the judge rendering a ruling opened up the option of an appeal on that ruling, which occurred, and the D.C. Circuit Court of Appeals has ordered a stay of proceedings until it can review the decision and the basis for the decision.

Judge McCall made the determination to continue hearing the Ali/Balucchi closing arguments on the motion to suppress the Letterhead Memoranda, since Ali/Balucchi is not involved in the plea agreement.

Prior to the order of stay, the judge completed review of the KSM plea agreement and stipulation of facts, noting scrivener's errors (minor errors that do not reflect the true intentions of the party) that needed to be fixed, and ascertaining whether or not the government agreed to certain wording changes proposed by the KSM defense counsel. Telling among the changes was the specification that KSM would be pleading guilty to having caused the actions and the attacks of 9/11, but not that he was the "supreme commander." This is likely a maneuver to prompt clemency from the sentencing panel. Though KSM is on record in interviews and interrogations proclaiming his masterminding of the 9/11 attacks, if the plea agreements are accepted, the sentencing panel will only see the stipulation of facts. Removal of references to being the "supreme commander" could psychologically reduce culpability on KSM's part and induce a sentencing panel to recommend a lighter sentence than the maximum 20 years negotiated.

Additionally, KSM writing suras on his signed copy of the stipulation of fact is significant. In a previous iteration of this commission that was aborted as a mistrial, the then-five accused terrorists issued a "plea" entitled "The Islamic Response," wherein they declared their righteousness in accomplishing the 9/11 attacks and justified them through use of quotations from the Qu'ran. By invoking these religious texts, the accused were not pleading guilty but declaring themselves to be spiritually blameless because all of their actions were in the service of Allah. By allowing KSM to add religious texts on the stipulation of facts and declaring by doing so he "faithfully corrected" the stipulation in light of the suras, he is once again turning his plea from guilt to an act of virtue. Victims and victim family members will be justified in questioning the justice of this plea agreement that not only gives KSM relief from the death penalty but some 20 years after having written "The Islamic Response," he is allowed to make the exact same declaration with no admission of guilt.

The trial counsel noted that collecting the victim impact statements, whether in recording or in written form, would take ten months at least. Since the victim impact statements were limited for the sentencing hearing for the Bali Bombers, statements for the 9/11 attacks would most likely be submitted straight to the sentencing panel, rather than read into the record. Although some statements may be read into the record, the mechanism for choosing which victim statements will be selected is not yet publicly established.