

**MILITARY COMMISSIONS TRIAL JUDICIARY
GUANTANAMO BAY, CUBA**

UNITED STATES OF AMERICA

v.

**KHALID SHAIKH MOHAMMAD;
WALID MUHAMMAD SALIH MUBARAK
BIN 'ATTASH;
RAMZI BINALSHIBH;
ALI ABDUL AZIZ ALI;
MUSTAFA AHMED AL HAWSAWI**

AE152G

Government Motion

For Inquiry Into Ramzi Binalshibh's Mental
Capacity To Stand Trial Pursuant to R.M.C.
706

19 December 2013

1. Timeliness

This filing is timely pursuant to the Military Commissions Trial Judiciary Rule of Court 3.7.

2. Relief Sought

The Prosecution respectfully requests this Commission order an inquiry into the mental capacity of Ramzi Binalshibh to stand trial under R.M.C. 706(a)(2).

3. Burden of Proof

The rules impose an obligation on the parties, including trial counsel, to notify the Commission if there is reason to believe that an accused lacks the capacity to stand trial. This Commission should order such an inquiry if there is a good faith basis for the request. "A motion for a sanity board should normally be granted if it is made in good faith and is not frivolous." *United States v. Mackie*, 66 M.J. 198, 199 (C.A.A.F. 2008) (citing *United States v. Nix*, 15 C.M.A. 578, 582 (1965)).

4. Facts

The facts are incorporated within the Law and Argument section below.

5. Law and Argument

In a prior military commission proceeding in 2008, based upon representation by defense counsel, the military judge ordered an inquiry in the mental capacity or mental responsibility of Mr. Binalshibh in accordance with R.M.C. 706. A government filing in that case cited defense counsel's assertion that Mr. Binalshibh suffered from Delusional Disorder, Persecutory Type as shown by fixed, firm, false beliefs that JTF-GTMO guards were producing noxious odors, sounds, vibrations and temperature manipulation in his quarters which affected his sleep. That case was dismissed prior to a court finding being issued on Mr. Binalshibh's mental competency to stand trial.

On or about 20 June 2013, LCDR Bogucki and several prosecutors met with Mr Binalshibh's then-current psychiatrist to discuss the nature of Mr. Binalshibh's current complaints. That doctor questioned whether Mr. Binalshibh suffered from any psychotic disorder, particularly a Delusional Disorder Persecutory Type, but also stated that he had no evidence of anyone intentionally causing sounds and vibrations of which Mr. Binalshibh complains. *See* AE 152D (RBS). He also observed that the guard force is particularly careful not to make acute noises around Mr. Binalshibh's cell and that the guards were very professional. *See* AE 152D (RBS).

On 17 and 18 December 2013, Mr. Binalshibh was ordered to be removed from the courtroom for being disruptive on four separate occasions. His outbursts in court appeared to be focused on his treatment by the guards.

On 18 December 2013, the Defense filed AE 152F, wherein they allege that Mr. Binalshibh is being exposed to noises and vibrations in his cell that interfere with his ability to concentrate or sleep. The Defense filed an affidavit from the Accused alleging that from September 2006 to the present day, he has been exposed to sounds and vibrations that interfere with his ability to concentrate, sleep, and his overall well-being. The Declaration further states that he is convinced that the noises are intentional, deliberate, and are being controlled by Joint Task Force (JTF) GTMO personnel. *See* AE 152F (RBS), Attachment B.

In AE 152F, Defense counsel for Mr. Binalshibh moved the Commission to hold an evidentiary hearing surrounding the perception of JTF-GTMO's alleged violation of this Commission's oral order. When the allegations first arose on this issue, the Prosecution inquired of the JTF-GTMO to ensure they were not intentionally disrupting Mr. Binalshibh's cell, and JTF-GTMO has consistently (and as recently as the day of submission of this filing) confirmed that it is not intentionally making any noises or vibrations to disturb Mr. Binalshibh. Of note, none of the other four Accused in this case, all of whom are housed in the same confinement facility, are making such claims.

An evidentiary hearing of any kind cannot and should not be held on this issue until Mr. Binalshibh is evaluated to determine if the noises he reports are actually hallucinations. In 2008, the Defense alleged, and the Prosecution conceded on the record, that Mr. Binalshibh had been previously (and consistently) diagnosed with Delusional Disorder, Persecutory Type, and on information and belief, Mr. Binalshibh was diagnosed with a closed-system delusion wherein he believes he is being persecuted by the guards. At no point in any of the preparations for the R.M.C. 909 hearings in 2008 did any of the previous treating psychiatrists opine that Mr. Binalshibh was not competent to stand trial, but all had consistently agreed with the diagnosis of Delusional Disorder, Persecutory Type.

If it is consistent with a majority of his medical records from the last seven years, this proposed psychiatric evaluation may well result in an opinion that the noises and vibrations the Accused has complained about are hallucinations. On information and belief, Mr. Binalshibh, if he is in fact again diagnosed as having Delusional Disorder, Persecutory Type, cannot be expected to accept the diagnosis because this mental condition results in a firm, fixed, and false belief that will be held by the patient despite all evidence to the contrary. On information and belief, unless he is medicated, he will likely continue to have these hallucinations (although the severity may wax and wane), which will remain constant litigation issues for the Military Commission.

If the mental exam comes back with a different diagnosis, or no diagnosis at all, then an evidentiary hearing about the confinement facility may be appropriate at that time. However, if there is in fact such a diagnosis, an R.M.C. 909 hearing would obviate any evidentiary hearing ostensibly demanding that facility personnel be called to the stand in order to prove a negative.

While former treating doctors' representations indicate that the Accused is competent to stand trial, the Prosecution nevertheless urges that the most prudent course of action now is to request that the Military Judge order an R.M.C. 706 inquiry. The Prosecution expects that such an examination will be completed, and a report filed with this Commission, prior to the next scheduled hearings in this case.

6. Request for Oral Argument

The government does not request oral argument.

7. Witnesses and Evidence

No witnesses.

8. Certificate of Conference

At 2107 on 18 December 2013, the Prosecution unsuccessfully attempted to contact counsel for Mr. Binalshibh. However, based on past conversations with counsel for Mr. Binalshibh on this topic, and recent averments by LCDR Bogucki on the record, the Defense does not believe an R.M.C. 706 Board is necessary.

9. Attachments

A. Certificate of Service, dated 19 December 2013.

Respectfully submitted,

//s//

Clay Trivett
Managing Deputy Trial Counsel

Michael J. Lebowitz
Captain, JA, USA
Assistant Trial Counsel

Mark Martins
Chief Prosecutor
Office of Military Commissions

ATTACHMENT A

CERTIFICATE OF SERVICE

I certify that on the 19th day of December 2013, I filed AE 152G, the Government Motion For Inquiry Into Ramzi Binalshibh's Mental Capacity To Stand Trial Pursuant to R.M.C. 706 with the Office of Military Commissions Trial Judiciary and I served a copy on counsel of record.

//s//

Clay Trivett
Managing Deputy Trial Counsel
Office of the Chief Prosecutor
Office of Military Commissions