

UNCLASSIFIED//FOR PUBLIC RELEASE
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 ADAM AL HAWSAWI	AE 325G SCHEDULING ORDER 15 May 2015
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1. In April 2014, the Defense filed a motion¹ requesting the Commission inquire into potential conflicts of interest arising from inquiries by the Federal Bureau of Investigation (FBI) into one or more defense teams. After appointment of a Special Review Team (SRT), walled off from the Prosecution, and further inquiry the Commission issued an order² in July indicating it had found no basis for conflict on the part of four of the Defense Teams but could not, with confidence, provide such an assurance as to the Defense Team representing Mr. bin al Shibh. Concerned about the delays inherent in further inquiring into the potential conflict centering on Mr. bin al Shibh's Defense Team, and on a previously filed request³ by the Prosecution to inquire into Mr bin al Shibh's mental capacity to participate in his defense, the Commission issued an Order⁴ severing his case from a joint trial with the other Accused. The

¹ Emergency Joint Defense Motion to Abate Proceedings and Inquire into Existence of Conflict of Interest Burdening Counsel's Representation of Accused filed 13 April 2014 (AE 292).

² Order, Emergency Joint Defense Motion to Abate Proceedings and Inquire into Existence of Conflict of Interest Burdening Counsel's Representation of Accused, 24 July 2014 (AE 292QQ).

³ Government Motion For Inquiry Into Ramzi Binalshibh's Mental Capacity To Stand Trial Pursuant to R.M.C 706, filed 19 December 2013 (AE 152G *et seq.*).

⁴ Severance Order, 24 July 2014 (AE 312).

Commission granted⁵ a request by the Prosecution to hold the severance in abeyance.

During the course of argument on the issue the Prosecution recognized the delay this could involve and asked that further inquiry into the potential conflict be conducted during later sessions.

2. In August 2014, the Commission directed the SRT, in a classified, under seal, order,⁶ to conduct certain actions in regard to the inquiry concerning the potential conflicts of interest. Since that order the SRT has provided thirteen (13) classified, *ex parte*, filings to the Commission culminating in the latest filing on 15 May 2015.⁷

3. At the session of the Commission in February 2015, the issue of the abatement of the severance order was revisited and the Prosecution was adamant as to the need to preserve the integrity of the joint trial.⁸

4. Conflict free defense counsel and an Accused mentally competent to participate in his own defense are required before sessions may resume in the normal course of business.

Based upon the latest filing by the SRT, and the stance of the Prosecution as to

⁵ Order, Government Emergency Motion to Reconsider AE 312 Severance Order, 13 August 2014 (AE 312C).

⁶ Notice of Under Seal Order, 27 August 2014 (AE 292XX).

⁷ Notice of Classified *Ex Parte* Filing by Special Review Team, filed 15 May 2015 (AE 292KKKK).

⁸ Unofficial/Unauthenticated Transcript of the Khalid Shaikh Mohammed et al (2) Hearing Dated 2/11/2015 from 11:16 AM to 11:46 AM at 8324:

MJ: the government adamantly opposes that severance; is that correct?

MDTC [MR. TRIVETT]: That's correct.

At 8325:

MDTC [MR. TRIVETT]:... but clearly we feel like additional time to resolve that, if necessary, is still in the interests of justice to maintain the joint trial, even if the other four are not moving forward.

At 8328-29:

MDTC [MR. TRIVETT]: ... but I think what's important from the prosecution's standpoint is that a severance right now is -- whatever little short-term gain we receive, is going to be followed by a lot of long-term pain for the government, for the judiciary, for all of the resources that need to be used ----

at 8332-33

MJ [COL POHL]:... the government position is until 292 is resolved, the government wants -- opposes severance, for want of a better term, no matter whether it takes two months, four months, six months -- it's already taken seven, and I'm doing it from July now. It has already taken since that time. So just so I am clear, the government position is we oppose any severance at this time, understanding it may be months before 292 is resolved?

MDTC [MR. TRIVETT]: Yes, that is the government's position.

preservation of a joint trial, the session of the Commission scheduled for 1-5 June 2015,

is **CANCELLED**.

So ORDERED this 15th day of May, 2015.

//s//
JAMES L. POHL
COL, JA, USA
Military Judge