Military Commissions:
ISN 10024 Khalid Sheikh Mohammed, et al. Pretrial Hearings
Week of September 16-20, 2024

Events:
The week of September 16-20, 2024, commenced with a motion brought by the Ali/Baluchi defense team to suppress certain documents and was followed by testimony from two witnesses specializing in psychology. The Ali/Baluchi defense team was in full attendance, but the KSM, Hawsawi, and Bin Attash defense teams sent token observers with the assertion that their plea agreement remains in place.

Initially, the Ali/Baluchi defense team argued against allowing the government's witness, psychiatrist Dr. WK5I, to testify, as she was initially a witness for the defense.[1] It was only after the defense determined not to call her as a witness that the Government adopted her as a witness.[2] The defense also argued that if she were allowed to testify, her testimony should be delayed until after the motion is resolved, since the government initially tendered her as a fact witness but was now seeking to qualify her as an expert witness.[3] The judge declined to delay testimony and instead pledged to strike the testimony or parts of the testimony from the record if the suppression motion rules in favor of the defense.

Testimony of Dr. WK51

Dr. WK5I was the psychiatrist on staff to treat detainees who arrived at GTMO in 2006. She eventually rotated out of the position after introducing the next psychiatrist to the patients. She agreed that detention conditions impacted detainee mental status and noted several changes she had suggested and saw completed to improve conditions.

She discussed the differences between fight/freeze/flee responses to shock versus to sexual trauma and indicated awareness of fight/freeze/flee/fawn responses but indicated she neither saw evidence of fawning responses (unconscious behavior that aims to please, appease, or pacify a threat) in Ali/Baluchi nor were they applicable to the situation.

Throughout questioning, Dr. WK5I maintained an emphasis on the individuality of each person and their response to trauma, noting that even in the same person a trauma response is unique to each situation. She discussed development of a mental healthcare model for GTMO and discussed the difficulties she encountered when she began working with the detainees. At that time, many of the detainees were either on hunger strikes or hoarding medications in their Qu'rans to facilitate suicide, and some attacked medical personnel responding to reports of emergencies. It was her understanding that all of the high-value detainees would potentially be charged with crimes.

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1 Though this witness was only referred to by an alphanumeric pseudonym, the background placed on the public record does not indicate that she was a CIA operative. It is possible that she is in a position to be actively endangered by associates of the detainees if her real name were to be published.

2 The feed was distorted several times, so explanation of this point was unclear and the transcript is not yet available. However, the impression was that the defense believes the Government waited for the rejection of the witness in order to get an idea of the theory of defense and gained poor-faith advantage determining that Dr. WK5I's testimony might be exceptionally damaging to the defense.

3 When queried about fact witnessing versus expert witnessing, Dr. WK5I indicated that she preferred to be questioned as a fact witness.

Although she was not the only medical official, she only recalls 3-5 of the 14 detainees/patients at Camp 7 reporting mistreatment or abuse in former custody situations, and she notified authorities of the allegations. Some of the 14 had mental difficulties, others did not; there was no universal exhibition of trauma. Ali/Baluchi himself largely reported no abuse or trauma prior to his capture and worked with his psychiatrist and other medical personnel to obtain medication to treat persistent headaches. Purely psychiatric treatments focused on "anxiety (not otherwise specified)" and a set of obsessive-compulsive and avoidant traits that may or may not have resulted from trauma related to prior confinement.

Examination of Dr. WK5I concluded in closed session examinations and cross-examinations.

Testimony of Dr. Davi Hanrahan

Later in the week, the Ali/Baluchi defense called Dr. David Hanrahan, who began his career as a Navy psychiatrist embedded with deployed Marine regional aid stations in the Middle East. While working in those deployments, Dr. Hanrahan developed a specialty in diagnosing and treating post-traumatic stress disorder (PTSD), post-concussion syndrome (PCS), and traumatic brain injury (TBI), most of which came from exposure to improvised explosive devices (IEDs).

He defined the classes of TBI (mild, moderate, severe, penetrating) and discussed measures he has taken to determine if a patient might be "faking bad" to avoid legal action or "faking good" to retain employment, both among the military and civilians in his current practice. He was appointed by the Convening Authority to evaluate Ali/Baluchi for TBI and other comorbid factors prior to retiring from the military in 2021 but is now being paid by the Convening Authority to continue with this work and testimony.

He first met with Ali/Baluchi in Echo-2 in the presence of Ali/Baluchi's lawyers in order to establish trust, then he evaluated Ali/Baluchi for 11 hours over several days. Dr. Hanrahan administered the MFAST test to determine any malingering about anxiety and depression, and Ali/Baluchi's score of 3 indicated no falsification of those maladies. Dr. Hanrahan also administered the Montreal Cognitive Assessment Test (MoCA), on which Ali/Baluchi scored 28/34. Dr. Hanrahan ultimately diagnosed Ali/Baluchi with PTSD, TBI, and PCS.

During further questioning, the doctor agreed that improper walling may lead to TBI but also stated that diagnosing where and when TBI or PCS occurred requires records from external observers. The patient's own report is unreliable due to memory interruption during concussion or loss of consciousness, so he could not attribute Ali/Baluchi's TBI and PCS to a given event based on the patient's self-reporting. Comorbid factors that Dr. Hanrahan notes as useful for evaluating TBI included tinnitus, depression symptoms, anxiety symptoms, sleep disorders, PTSD, nerves, photophobia, sleep apnea, fatigue, and headaches. He differentiated between post-concussive headaches and migraines by indicating where each headache type tends to occur. The defense finished initial examination by asking Dr. Hanrahan questions about slides shared by Dr. WK5I, the differences between different national, international, and military medical diagnostic manuals, and the treatment he conducts in his private practice.

The government began cross examination by asking about any authorship of peer-reviewed articles on TBI, any board certifications, and the differences between clinical examinations for diagnosis and treatment and forensic examinations for determining legal ramifications. Though the doctor had no board certification and had not published any professional articles, he had conducted forensic examinations as part of his residency and had received training in how to testify as an expert witness.

He also noted that although a mentor had turned down the request to be a TBI expert, that mentor had recommended him. Dr. Hanrahan expressed interest in trying to treat a detainee equally to a military service member and admitted to some curiosity about meeting a terrorist celebrity. Applying the same treatment to Ali/Baluchi as he would a service member meant that Dr. Hanrahan relied on the self-reporting of the patient and set no value other than a potentially compromised memory to Ali/Baluchi reviewing documents during the interviews. Dr. Hanrahan did review some other documents concerning Ali/Baluchi's medical treatment, but he noted that the results of an MRI do not impact the diagnosis of PTSD and TBI, and such imagery would be unlikely to show the damage. He recommended an in-patient treatment to follow the evaluation but did not conduct follow-up treatment himself. He noted that while late-onset PTSD is not uncommon, PTSD arising a decade or more later would be very unusual.

Observations:
The government and the Ali/Baluchi defense team each had narratives they were pushing to prove by the witnesses' testimony – and both witnesses adamantly maintained their own narratives. Dr. WK5I maintained her narrative by correcting assumptions and inaccurate wordings. Dr. Hanrahan maintained his narrative by responding evasively when a question did not match his perceptions of reality. These differing tactics made Dr. WK5I appear to be the stronger witness possibly relegating Dr. Hanrahan's testimony to written only during a full trial.

Both witnesses endured long hours of testimony well and generally gave the appearance of wanting to be helpful, so both would potentially play well to a jury or panel. However the pair of witnesses back-to-back leave the impression that Ali/Baluchi may suffer from generalized anxiety and depression, not PTSD, and any TBI that he may have suffered is not necessarily attributable to his treatment while in custody, which is not of benefit to the defense.

If the judge denies the defense's suppression motion and Dr. WK5I's testimony remains on record to be given to a jury or a sentencing panel, the Ali/Baluchi defense will likely either tender a different medical witness or coach Dr. Hanrahan more exensively prior to another appearance.