

Morris D. Davis

May 16, 2016

Dear Periodic Review Board Members,

My name is Morris Davis. I served as a judge advocate in the United States Air Force for 25 years and retired as a colonel in 2008. My final military assignment was as Director of the Air Force Judiciary where I supervised more than 250 personnel assigned worldwide and had oversight responsibility for the Air Force military justice system, including the clemency and parole program for Air Force members serving courts-martial sentences. I was a full-time member of the faculty at the Howard University School of Law from 2011-2015 where I taught, among other things, a course in national security law. I have been an administrative law judge at the U.S. Department of Labor since May 2015.

I served as the Chief Prosecutor for the military commissions at Guantanamo from September 2005 until October 2007. During that time, I performed temporary duty at Guantanamo regularly and visited the detention facility often. The prosecution task force that I led had grown to more than 100 personnel from DOD, DOJ, FBI, CIA and other agencies by the time I left the job in October 2007.

One of my primary responsibilities was to review information that had been collected by the Criminal Investigation Task Force to assess whether there was sufficient reliable evidence to potentially charge detainees with law of war offenses. In the course of developing potential cases for trial, I determined that it would be helpful in presenting cases to the military commission panels to have someone who could explain how one joined the Taliban or Al Qaeda and went through the process.

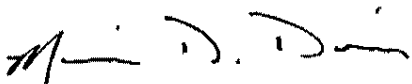
I met with the Director of the Joint Intelligence Group (JIG) to solicit his advice on whether that was feasible and, if so, if there was a detainee that might be best suited to assist the prosecution. I do not recall exactly when that took place, but I believe it was the summer of 2006. The Director of the JIG told me that there were two detainees who had been very cooperative, had developed a good relationship with the Commander of the Joint Task Force, spoke fluent English, and were the best candidates. One was Tariq al-Sawah, who has since been transferred out of Guantanamo and released to Bosnia, and the other was Mohamedou Ould Slahi.

The Director of the JIG made arrangements for me to meet with Mr. Sawah and Mr. Slahi. I went to the part of the camp where they lived in a separate area from the other detainees. They had individual quarters with a small garden in between where they grew vegetables and herbs. What surprised me most on that first visit was finding that they had a barbecue grill and DVD players in each of their quarters so they could watch movies ... in fact, the Director of the JIG gave me a DVD to give them. I met with Mr. Slahi inside his quarters. He had picked mint from his garden and had made tea for our meeting. Our first meeting was brief and was just an

introduction. The thing that I recall most about my meetings with Mr. Slahi was that he was always gregarious and upbeat.

My primary interest was in obtaining the cooperation of Mr. Sawah who had been a bomb-making trainer and had a long history that went back to the early days of the Muslim Brotherhood. I was told, by the JTF leadership, however, that any deal had to be for both Mr. Sawah and Mr. Slahi because of their close relationship. Before I was willing to pursue a deal, I wanted to know what evidence we had against Mr. Slahi. I knew from conversations with one of my prosecutors, Lt Col Stuart Couch who had been detailed to the Slahi case since before I became Chief Prosecutor, that Mr. Slahi had been subjected to enhanced interrogation techniques that Lt Col Couch considered to amount to torture. After reviewing the information in the case file, I concurred completely with Lt Col Couch's assessment. We later had a meeting at the Counterterrorism Center that included representatives of all of the relevant agencies involved with detainees to discuss what we had on Mr. Slahi. The agents that had spent a considerable amount of time devoted to his case concluded that there was no reliable evidence to charge him with any offense against the United States. After reviewing all of the information available at that time, I concurred with their assessment that there is absolutely no evidence that Mr. Slahi ever engaged in any acts of hostility towards the United States.

The last time I saw Mr. Slahi was in the summer of 2007. When I left that day, I said I would be back soon to see him. I ended up resigning not long thereafter over the issue of torture and I have not seen Mr. Slahi again since. It has been more than nine years since I last saw Mr. Slahi, so I have no personal knowledge of how he has done in the interim. What I can say is that in the several times I met with him over a period of about a year in 2006-2007, he was always polite and personable, and I did not perceive him to pose a threat to the United States. He was a distinct contrast to many of the other detainees I observed that would spit, shake their fists and yell when I walked through the camp. The irony is that many of them are no longer at Guantanamo and Mr. Slahi still is. I have no qualms holding those who engaged in hostile acts against the United States accountable. I do have qualms with ignoring the rule of law and indefinitely detaining others under circumstances we would condemn if they were Americans being held by another country. Unless there is new evidence that shows Mr. Slahi engaged in acts hostile to the United States that I did not see, I believe it is long past time to look in the mirror and ask if we would condone the continued detention of an American citizen under the same circumstance.



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