

UNITED STATES)
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 v.)
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 MOHAMMED JAWAD)
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DECLARATION
OF
LIEUTENANT COLONEL
DARRELJ.VANDEVELD

I, Darrel J. Vandeveld, say:

1. I am the former lead prosecutor in the Commissions case of *United States v. Mohammed Jawad* U.S. v. Jawad. I have seen no formalization of the change in lead counsel, but my name no longer appears on court filings and it seems that I have been replaced by USAF Lieutenant Colonel Douglas Stevenson.
2. I recently asked to be permitted to resign from the OMC-P and asked instead to serve out the balance of my orders (I entered active duty in May 2007, and extended for a year from the end date of my original orders) in Afghanistan or Iraq, two AORs in which I have served before and where I believed I could still contribute to our nation in its time of ongoing hostilities.
3. I have reviewed defense counsel's request for production of me as a witness. Although the request contains some speculation and refers to some areas on which I would not be able to testify, the request also correctly summarizes some areas of testimony where I do believe I have relevant testimony to offer. It is true that I have declined voluntarily to disclose my reasons for offering my resignation to defense counsel or provide a copy of my resignation letter and have declined voluntarily to be formally interviewed, deposed or to answer written interrogatories from the defense.
4. I have been "accused" of forming an attorney-client relationship with the detailed military defense counsel for Mr. Jawad, Major David Frakt. I have formed no such relationship with him and informed Lt Col Stevenson of this fact last Friday, so I was surprised to see the allegation resurface today. I am unaware of any matter for which I would need legal representation at this time. Major Frakt and I have developed a cordial relationship of mutual respect, nothing more. I have divulged to Major Frakt those items of discovery that in my professional judgment the Rules for Professional Conduct, the Military Commissions Act, and the Manual for Military Commissions (MMC) have required me to relinquish, consistent with my ethical obligations as a prosecutor. In particular, I have forwarded to him immediately those items of evidence I considered to be exculpatory or in mitigation of the acts for which Mr. Jawad stands accused. Where I was unable to provide him with evidence that he requested, I attempted to give him an explanation for why I could not provide the evidence. In some cases, that has meant acknowledging that we have been unable to locate such evidence despite extensive searches. In other cases, that has meant identifying certain agencies, offices, individuals, or procedures which were preventing the disclosure, although I can swear under oath that

I never revealed any classified information Major Frakt had not been entitled to receive; nor have I singled out any particular individual for condemnation.

5. I have not spoken to BGen Hartmann about the Jawad case since the defense first raised issues regarding undue influence earlier this year and am unaware of his personal feelings towards defense counselor what role they may have played in any decisions in the case. I have observed that a number of defense requests which I considered to be reasonable and in some cases indicated support for were nevertheless rejected by the Convening Authority, presumably on the advice of the Legal Advisor. Specifically, I agreed with Major Frakt that his request to have an independent physician review Mr. Jawad's health records should be approved, and that this review be assisted by Dr. Mullington, a sleep deprivation expert whose retention as a defense expert had already been approved by the Convening Authority.

6. I have had some limited discussions with COL Morris regarding Jawad. While I hold COL Morris in the highest regard personally, he and I differ on what would constitute a just, fair and transparent outcome in this case. My view of the case has evolved over time. I now accept that Jawad was under the age of eighteen when apprehended, I suspect that he was duped by Hezb – e Islami Gulbuddin into joining the organization, and it seems plausible to me that Jawad may have been drugged before the alleged attack on 17 December 2002. I base these judgments on the evidence collected at the time, and not because of any sympathy for Mr. Jawad himself, whom I do not know and have only seen during Commission proceedings. Based on my view of the case, I have advocated a pretrial agreement under which Mr. Jawad would serve some relatively brief additional period in custody while he receives rehabilitation services and skills that will allow him to reintegrate into either Afghan or Pakistani society. One of my motivations in seeking a reasonable resolution of the case is that, as a juvenile at the time of his capture, Jawad should have been segregated from the adult detainees, and some serious attempt made to rehabilitate him. I am bothered by the fact that this was not done. I am a resolute Catholic and take as an article of faith that justice is defined as reparative and restorative, and that Christ's most radical pronouncement - command, if you will – is to love one's enemies.

6. COL Morris, Brig Gen Hartmann and the Convening Authority have declined to entertain any plea discussions not preceded by an offer to plead signed by Mr. Jawad, and has been unreceptive to informal proposals to resolve the case which I considered to be just and reasonable. In my view, detailed military defense counsel have understandably tenuous relationships with their clients, premised in large part of the natural mistrust detainees have of those "who wear the uniform of my enemy." It is unrealistic to presume that a detainee will sign an offer to plead without some credible assurance that the plea will be accepted by the Convening Authority. I have also witnessed, understandably and with regret, COL Morris display a certain hostility towards Major Frakt that is uncharacteristic of COL Morris. This unfriendly attitude truncated what I had hoped might have been fruitful plea negotiations.

7. My ethical qualms about continuing to serve as a prosecutor relate primarily to the procedures for affording defense counsel discovery. I am highly concerned, to the point that I believe I can no longer serve as a prosecutor at the Commissions, about the slipshod, uncertain "procedure" for affording defense counsel discovery. One would have thought that after six years since the Commissions had their fitful start, that a functioning law office would have been set up and procedures and policies not only put into effect, but refined.

8. Instead, what I found, and what I still find, is that discovery in even the simplest of cases is incomplete or unreliable. To take the Jawad case as only one example - a case where no intelligence agency had any significant involvement -- I discovered just yesterday that something as basic as agents' interrogation notes had been entered into a database, to which I do not have personal access, on or about 11 August 2008. These and other examples too legion to list, are not only appalling, they deprive the accused of basic due process and subject the well-intentioned prosecutor to claims of ethical misconduct.

9. As I understand it, some protocol for declassifying evidence, which is obviously a requisite to the transparency often touted as one of the goals of the Commission, has only recently been developed and signed by the Deputy Secretary of Defense. I have not seen this document myself, but the description given to me by an informed party suggests that the procedure will be cumbersome, involve standards that may differ from agency to agency, and which run the risk of either compromising national security, assets in the field, or withholding evidence from the accused.

10. I want to emphasize that the efforts of certain intelligence agencies to facilitate this process have been nothing short of herculean. Nonetheless, there is an innate tension between intelligence equities and a prosecutor's obligation to relinquish information to the defense. In my view, evidence we have an obligation as prosecutors and officers of the court has not been made available to the defense. Potentially exculpatory evidence has not been provided. My own practice has been to relinquish immediately any piece of evidence I have come across to the defense, even at the peril of the case against Mohammed Jawad, and even though I sympathize and identify with the victims in the case. To take only one example, when I discovered that Mr. Jawad had been placed in the "frequent flyer" program, I notified the defense, sought an investigation, spoke to witnesses who had not been identified by the law enforcement agencies assisting us, and, in the end, conceded in a court filing that I had been wrong in denouncing Mr. Jawad when he complained of the conduct toward him in one of the first Commission proceedings. My personal practice of disclosing exculpatory or mitigating evidence is not universally practiced at OMC-P.

12. I have previously declined to share the foregoing information with the defense because I believe I have some justifiable concern of retaliation if I am seen as being too cooperative with the defense and because I had hoped to change and improve things from within OMC-P. Other officers who have displeased the powers that be have been subject to treatment that in my opinion was retaliatory in nature. For example, LTC Will Britt, one of the most solid soldiers I've ever served with, received what was described to me

as a mediocre Officer Evaluation Report, and stated at his farewell gathering that the Defense Meritorious Service Medal he received (something given as a matter of course to other departing officers) had been obtained only through extraordinary measures taken by the instant chain of command. Likewise, the travails of Col Morris Davis have been widely chronicled, and do not need to be recounted here. I have decided to come forward at this point and share some of my reasons for offering my resignation because I believe I have an obligation to provide truthful information to the court regardless of which side calls me as a witness. I am troubled that the current trial team has apparently denied that I have any relevant testimony to provide to the commission and refused to produce me as a witness without even bothering to ask me what I might actually say if called to testify.

13. In summary, as an Officer of the Court, I can say that I do believe I have relevant testimony to offer in one or more of the areas indicated by the defense counsel, and if called to testify, I will answer truthfully. I am available to travel to Guantanamo if so ordered.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

22 Sep 08
Date


Darrel Vandeveld, LTC, USAR