

AFFIDAVIT OF THE HONORABLE SUSAN J. CRAWFORD

Judge Susan J. Crawford, being duly sworn, deposes and says,

I became the Convening Authority for the Office of Military Commissions on February 4, 2007. I was appointed by the Secretary of Defense, and ordinarily report to the Deputy Secretary of Defense (DSD), in his capacity as the Secretary's alter ego. The DSD signs my Senior Executive Service rating.

I am the only person in this organization who is directly in the supervisory chain of the Secretary of Defense, rather than the Office of General Counsel, Department of Defense. I do not supervise any personnel in the Office of Military Commissions.

As Convening Authority, I am in a 3-year term position as a member of the Senior Executive Service (SES), not part of the career SES. I previously served for 15 years as a judge and chief judge on the Court of Appeals for the Armed Forces, and have served, among other positions, as the General Counsel, Department of the Army, and Inspector General, Department of Defense.

I have never received input, orders, instructions, or suggestions from the Secretary of Defense, Deputy Secretary of Defense, or any other person regarding anything having to do with the trial of detainees by military commissions. My rare conversations with the Deputy Secretary have concerned matters such as whether to permit sketch artists to operate in the military commissions courtroom and the funding of the new courtroom in Guantanamo Bay – never about particular cases, the pace of trials, types of cases charged, or anything having to do with the selection, charging and trial of any of the detainees.

I became aware of Colonel Morris Davis's concerns about his relationship with Brigadier General Hartmann some time after July 2007, perhaps in August. I believed that Colonel Davis misunderstood the supervisory chain and misunderstood the role of legal advisor, which I believe is analogous to a staff judge advocate in military practice. Colonel Davis never raised any concerns about the military commissions process, substantive or procedural, before that point. He already was the Chief Prosecutor when I assumed my duties.

Colonel Davis delivered a complaint about office operations, mainly dealing with BGen Hartmann's interaction with the prosecution, to my office on Friday, August 24, 2007. I was not present in the office at the time, (for the record, I was not attending a Johnny Mathis concert as alleged by Colonel Davis in his testimony – the concert was the evening of August 23 at Wolf Trap Park for the Performing Arts) but became aware of the substance of his complaint that afternoon and set up an appointment with William J. Haynes, General Counsel of the Department of Defense for the following Monday

morning. I consulted Mr. Haynes because both Brigadier General Hartmann and Colonel Davis worked for him, and I thought it appropriate that their supervisory chain address the issue rather than the Convening Authority or the IG (I well recognized that Colonel Davis had an independent right to present matters to the IG at any time and did not have to go through me or anyone else to do so). Following the meeting with Mr. Haynes, I sent a memorandum to Mr. Haynes referring the complaint to him for appropriate action and to Colonel Davis informing him that I had referred his complaint to the DOD General Counsel. Before he received the memo, Colonel Davis called me that same afternoon to inquire as to the status of the matter and I advised him of my referral action.

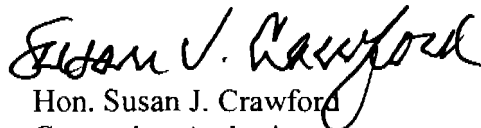
On Friday, September 21, 2007, I met with Colonel Davis in my office at his request. Colonel Wendy Kelly was also present. At that meeting Colonel Davis informed me of the details of an amendment to his complaint against Brigadier General Hartmann. Since the matter had not yet been resolved, I did not comment. Colonel Davis also informed me that his office would not swear charges in any future cases until the matter was resolved. I advised him that I had removed BGen Hartmann and Mr. Michael Chapman (Office of Military Commissions Staff Director, who also served as Deputy Legal Advisor) from involvement in providing legal advice to me until the matters that Colonel Davis raised were resolved; I intended to ask the General Counsel to appoint Mr. Ron White, also on the staff, to serve in that capacity in the meantime. Thus, and especially since the Court of Military Commission Review had already ruled in favor of the government on the issue of jurisdiction in United States v. Khadr, I advised Colonel Davis that there was no reason for his office not to charge cases if those cases were prepared.

I had very few conversations with Mr. Haynes about the commissions process, and no conversations regarding particular cases, types of cases, charging decisions or outcomes. I never met Mr. Stephen Cambone and have never had any communications with him. I have not spoken to the Vice President or anyone in his office regarding military commissions at any time.

I received a recommendation for approval of a pretrial agreement in the case of United States v. Hicks signed by BGen Hemingway, then the legal advisor, as well as Colonel Davis. At no time did Colonel Davis ever contact me personally to inform me that he did not agree with the terms of the pretrial agreement or had any complaints about the process of negotiation of the pretrial agreement. Colonel Davis later approached me about his comments to the press in which he criticized the process by which the pretrial agreement was accomplished. He told me that he thought it was "healthy" that he spoke publicly and critically about the decision. Contrary to Colonel Davis' allegations, I did not counsel him privately about his public remarks. One of the reasons that he was not primarily involved in the final Hicks negotiations is that the defense had filed a motion to disqualify Colonel Davis based on claims that he conducted his office inappropriately because of public and critical comments he made regarding defense counsel in the case.

The Joint Defense Motion to Dismiss in the case of United States v. Khalid Sheikh Mohammed, et al, implies that as Convening Authority I saw or received a draft of the charge sheet prior to the swearing of charges on February 11, 2008. I did not see, review, discuss, or receive a briefing on the charge sheet or any charges in the case until after the swearing of charges.

Further deponent saith not.


Hon. Susan J. Crawford
Convening Authority
Office of Military Commissions

The foregoing instrument was acknowledged before me, this 22nd day of May, 2008. I do further certify that I am a person in the service of the U.S. Armed Services authorized the general powers of a notary public under Title 10 U.S.C. 1044a.



RUDOLPH P. GIBBS, Jr., TSgt, USAF

