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European Languages

زبانهای اروپایی

JOHN KIRIAKOU

03.08.2024



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JOHN KIRIAKOU: The CIA & the 9/11 Plea Deals

If you don't like the outcome of this odyssey through uncharted legal territory, blame the C.I.A., Mitch McConnell and almost every other member of Congress who served in 2009 and 2015.



Lower Manhattan skyline after a Boeing 767 hit the World Trade Towers on Sept. 11, 2001. (Michael Foran, CC BY 2.0, Wikimedia Commons)

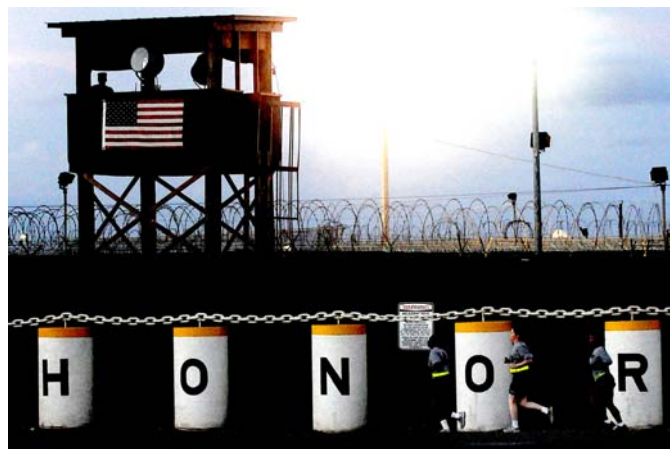
The U.S. Defense Department announced Wednesday that Khalid Shaikh Muhammad (KSM), the alleged mastermind of the Sept. 11 attacks, as well as two co-defendants, had agreed to plead guilty to multiple charges of terrorism and would escape execution, serving consecutive life sentences with no chance of parole instead.

The agreement brings to an end, at least for KSM, Walid bin Attash, and Mustafa al-Hawsawi, an odyssey through uncharted and unprecedented Defense Department legal territory. The announcement led to mixed feelings from many of the 9/11 victim families, human rights activists and the legal community, and there are certainly lessons to be learned.

The deal, according to the Associated Press and attorneys for the defendants, is actually quite straightforward. The three will serve sentences of life without parole. In exchange, the Pentagon has promised to not impose capital punishment and will allow them to remain at Guantanamo for rest of their lives. (They reportedly don't want to experience the harsh winters at the Supermax penitentiary in Florence, Colorado.)

Much of the commentary around the deal is negative, unsurprisingly. *The New York Post*, for example, wrote that the deal “dishonors the victims of terror.” And Senate Minority Leader Mitch McConnell released a statement saying disingenuously that:

“The Biden-Harris Administration’s weakness in the face of sworn enemies of the American people apparently knows no bounds. The plea deal with terrorists...is a revolting abdication of the government’s responsibility to defend American and provide justice...The Administration’s decision to spare these mass murderers from the death penalty is an especially bitter pill.”



June 16, 2010: U.S. soldiers run in front of Guantanamo Bay Detention Camp Delta detention center. (Joint Task Force Guantanamo, Flickr, CC BY-ND 2.0)

Oh, how quickly they forget. If you want somebody to blame, blame the C.I.A. And Mitch McConnell and almost every other member of Congress who served in 2009 and 2015.

Let me begin by saying that I can tell you from first-hand experience that KSM and his codefendants were absolutely guilty of planning and carrying out the Sept. 11 attacks. These are very, very bad people. They have the blood of nearly 3,000 Americans on their hands. They deserve to be punished severely. Many Americans, perhaps even most Americans, probably believe they deserve the death penalty for what they did. But that's not going to happen for some very specific reasons.

As an aside, I was the C.I.A.'s chief of counterterrorism operations in Pakistan from January to May 2002. At one point in March of 2002, after my team had captured so many Al-Qaeda fighters that we had literally filled the Rawalpindi Jail, I sent a cable to C.I.A. headquarters asking what to do with the prisoners.

The response was quick: Put them on a C-12 cargo plane and send them to Guantanamo. The idea was that they would remain at Guantanamo for three or four weeks until the Justice Department could determine in which federal district court — the Southern District of New York, the Eastern District of Virginia, or the District of Massachusetts — they would be tried. They would then be transferred to the United States, where they would appear before a jury of their peers and, presumably convicted, sentenced, and many hoped, executed. But that never happened.

A Big Fish for the Agency

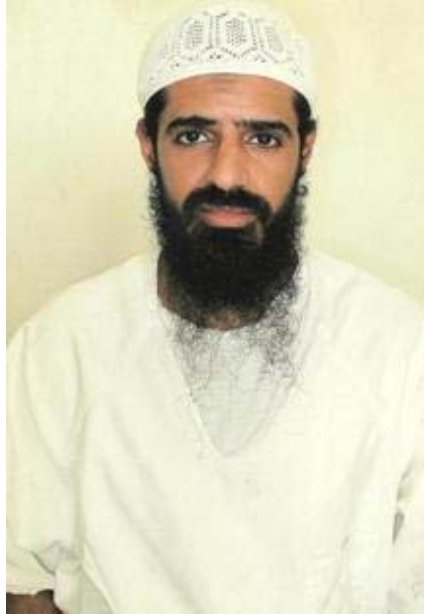


Khalid Sheikh Mohammed in 2003 after his capture. (Wikimedia Commons, Public domain)

Enter the C.I.A. KSM was a very big fish for the Agency. And rather than turn him over to the Justice Department once he was captured, the C.I.A. elected to send him instead to a series of a half-dozen or so secret prisons around the world, where C.I.A. officers and contractors subjected him to merciless torture.

Sure, KSM and the others eventually confessed to planning and carrying out the Sept. 11 attacks. But they probably would have confessed to kidnapping the Lindbergh baby, if they

had been asked. And in the end, nothing that they had told the C.I.A. could be used against them in the Guantanamo military tribunal because it had been extracted through torture.



Waleed bin Attash in 2010. (International Committee of the Red Cross, family of the subject, Wikimedia Commons, CC0)

As a result, there was a real chance that even the stacked deck of a Pentagon military tribunal would have had to find them not guilty.

At the same time, our elected representatives on Capitol Hill, in an overwhelmingly bipartisan fashion, passed a measure in 2009 to forbid any Guantanamo prisoner from being transferred to the United States to face trial.

That vote was 68-29 in the Senate and 281-146 in the House. And in 2015, Congress passed a bill forbidding the president from closing the facility. That vote was 91-3 in the Senate and 370-58 in the House. As a result, these heroes of the rule of law made Guantanamo permanent.

So, what is a terrorism defendant who has been tortured by the C.I.A. to do? He accepts the fact that he will never, ever be free and he takes the best deal his attorneys can negotiate, figuring the government would have continued to argue “national security” to delay the military tribunal indefinitely. At the end of the day, they just simply didn’t want to risk the death penalty.

And what is a Guantanamo military prosecutor to do? He goes public that the C.I.A. blew it, that the likes of KSM and his friends could have been convicted two decades ago and probably would have been executed by now if the C.I.A. had simply followed the law.

But here we are, nearly 23 years after the attacks, and many of the 9/11 families feel robbed. They feel that their family members died violently and unnecessarily and their killers get to live. That's the sad truth. But don't blame Joe Biden. It's not his fault. Blame the outlaws at the C.I.A. We should never forget (or forgive) that they subverted the Constitution just because they could.



Mustafa Al-Hawsawi, undated. (Wikimedia Commons, Public domain)

And what of the issue of plea bargains? Again, from first-hand experience, I can tell you that they're used as cudgels. In my own case, after my arrest for blowing the whistle on the C.I.A.'s torture program, I was offered a plea deal that I eventually accepted.

I believed in my heart that I hadn't done anything wrong, and I knew that if there had been such a thing as an "affirmative defense," where I could have said that I did what I did in the public interest, I would have been acquitted at trial.

But in the end, I was offered a sentence of 30 months in prison. I asked my attorneys what my likely sentence would be if I were to turn down the government's offer, go to trial, and lose. The answer was 12-18 years. And indeed, at my sentencing, Judge Leonie Brinkema of the Eastern District of Virginia said on the record,

"I see you have a plea deal, Mr. Kiriakou. I don't like it. I don't like it one bit. But I'm compelled to accept it. If it were up to me, I would give you 10 years."

Well, imagine the alternative if your name is Khalid Shaikh Muhammad or Walid bin Attash or Mustafa al-Hawsawi. The alternative is the death penalty. Nobody wants to roll those dice.

John Kiriakou is a former C.I.A. counterterrorism officer and a former senior investigator with the Senate Foreign Relations Committee. John became the sixth whistleblower indicted by the Obama administration under the Espionage Act—a law designed to punish spies. He served 23 months in prison as a result of his attempts to oppose the Bush administration’s torture program.

By John

Kiriakou

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News

August 2, 2024