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Guest:

[Lt. Col. Stuart Couch](#), retired U.S. Marine Corps prosecutor who served in the Office of Military Commissions from 2003-2006. He currently serves as an immigration judge in Charlotte, North Carolina.

JUAN GONZÁLEZ: Today we spend the hour taking an inside look at the Guantánamo military prison, where 166 men remain locked up. Many have been held for over a decade without charge. Our first guest today was one of the first military officers assigned to prosecute prisoners at Guantánamo. Stuart Couch joined the Marines in 1987, enrolled in law school, became a military prosecutor, and rose to the rank of lieutenant colonel. He eventually left active duty but returned after the September 11th attacks. A friend of his, Michael Horrocks, died on September 11th. Horrocks was the co-pilot of United Airlines Flight 175, the second plane to hit the World Trade Center.

AMY GOODMAN: Two months after the attacks, President Bush issued an order creating military commissions to try prisoners captured abroad. Lieutenant Colonel Couch's first assignment was the prosecution of a man named Mohamedou Ould Slahi. At one point, Slahi was described as "the highest value detainee" at Guantánamo Bay. The case would change Couch's life and put him at the center of a national debate around torture, interrogations and ethics.

Couch's story is featured in the new book, *Terror Courts: Rough Justice at Guantanamo Bay*. It's by

Wall Street Journal

reporter Jess Bravin. Later in the show, we'll be joined by Jess, but first we turn to Lieutenant Colonel Stuart Couch, who's joining us from Charlotte, North Carolina, where he now works as an immigration judge.

Lieutenant Colonel, welcome to *Democracy Now!* Talk about the first day you went to

Guantánamo and what you found.

LT. COL. STUART COUCH: Well, Amy, it was in October of 2003, shortly after I had joined the Office of Military Commissions. And on that particular day, I was waiting to watch the interrogation of one of the detainees who had been assigned to me to prosecute his case. This was a detainee that was particularly cooperative and involved in some very serious activities in the Gulf region. As I was waiting in a room next to his interrogation room, I heard some loud heavy metal rock music playing down the—down the hallway. I went down to investigate. I thought it was a couple of guards that were off duty and didn't realize that we were getting ready to conduct the interview. So I walked down the hallway, and as I reached the room where the source of the music was coming out, the door was cracked. And I looked into the room, and I could—all I could see was a strobe light flashing. The rest of the lights in the room were out, but from the flashes of the strobe light, I could see a detainee in orange sitting on the—seated on the floor and shackled, hand to feet, and rocking back and forth.

There were two civilians who asked me, you know, what was I doing. And I said, "I'm Lieutenant Colonel Couch. You need to turn that down. What's going on here?" And they just basically told me to move along, and shut the door in my face. There was a judge advocate reservist with me, and I said, "Did you see that?" And his immediate response: "Well, yes. That's approved." And so, that was my first inclination that there was—of evidence of coerced interrogations going on at Guantánamo.

AMY GOODMAN: And so, what did you do at that point?

LT. COL. STUART COUCH: Well, I started mulling that over. For me, it was—it was a degree of a flashback. Before I had become a lawyer, I was a naval aviator in the Marine Corps, a C-130 pilot. And part of that training as an aviator, we were sent to a school called SERE school—Survival, Evasion, Resistance, and Escape. It's a school conducted by various Department of Defense entities to help train aviators for how to conduct themselves if they're ever taken into captivity by the enemy. Basically, it's—the course is based upon lessons learned of the treatment of aviators in the war in Vietnam and also the treatment of our own POWs that suffered in Korea. And so, what I saw occurring on that day in October of 2003 was right out of the SERE school playbook. It was precisely the same treatment that I had received there.

And so, having had that experience, my immediate concern was, if this is how the evidence is being collected in some of our cases, it's going to be inadmissible, because it's going to be at least coercive and at worst torture that precipitates that information. And so, there—at that time, I was still becoming acquainted with the military commissions process that had been set up. The rules and standards of admissibility of evidence were significantly different than I was accustomed to, both in civilian prosecutions as well as military courts-martial. And so, in my view, this incident sort of crystallized for me very quickly that there were going to be some problems with some of the evidence that we were to use.

JUAN GONZÁLEZ: Now, this, of course, was in 2003, before the Abu Ghraib photos were revealed to the world and where—before there was real discussion of possible mistreatment or torture of prisoners in U.S. custody. Could you talk about the—when you then began to get the case of Mohamedou Ould Slahi and what you found as you began to deal with that particular case?

LT. COL. STUART COUCH: Well, by the—not long after I joined the office in August of 2003, the Slahi case was presented to me. And at that time, to our knowledge, he was one of the very few detainees held at Guantánamo Bay that had a 9/11 connection. As I was studying over the different statements that he had made, the intelligence reports that had come out of his interrogations, I could see a trend where he was uncooperative for a long period of time, but then, beginning in the later part of the summer of 2003, I saw where he began to give up significant information. And so, again, as a prosecutor, my view was past conduct and what evidence I had of past conduct and what was going to be his connection to 9/11, if any.

The vast majority—virtually all of the evidence I had against Slahi at that point were his own statements, as well as statements of another detainee. And so, to determine the veracity of that information, I had to find out, OK, why is he saying the things he's saying about his own conduct? And I actually plotted it out over a chart on a timeline, and I could see a definite point where he went from giving no information to giving a lot of information. And so, that was—after I saw what I saw in October of 2003, my concern was, if this—if these were the kinds of interrogation techniques that were being applied to Slahi to get his cooperation, then we might very well have a significant problem with the body of evidence that we were able to present as to his guilt.

JUAN GONZÁLEZ: Could you go into the details of some of his interrogations and what they reported?

LT. COL. STUART COUCH: Well, at that time—at that time, I was not privy to what techniques were applied in his interrogations. All I had was the intelligence reports that came out that stated what he—what admissions he made. And I do want to make sure I'm clear on this, that none of the information that I'm going to talk about today is classified at this point; it's all been subject to a congressional inquiry and is a matter of congressional record.

I requested information to tell me, OK, give me the circumstances of the interrogations and interviews where Slahi was giving his information, again, in preparation for the day down the road that I would have to present this evidence in court, with the concern of basically credibility of the information. That information was not provided to me. I had a criminal investigator that was working on this case, and as we began to discuss these matters, he had the same concerns that we might have a problem with the evidence. And I would note he's—he was also a former marine, as well, so we had a lot of commonality on how we viewed the world. This criminal investigator had unofficial sources of information on the intelligence side. There was kind of this dividing line between the law enforcement efforts at Guantánamo and the intelligence efforts at Guantánamo. My investigator had sources of information on the intelligence side, and he was able to start receiving documents and information that painted, for lack of a better term, the rest of the story—in other words, why—you know, what was the nature of these interrogations. And that information was coming out piecemeal.

And so, over the subsequent eight or nine months, it became clear that this information—that what had been done to Slahi amounted to torture. Specifically, he had been subjected to a mock execution. He had sensory deprivation. He had environmental manipulation; that is, you know, cell is too cold, or the cell is too hot. He, at one point, was taken off of the island and driven around in a boat to make him believe that he was being transferred to a foreign country for interrogation. He was presented with a ruse that the United States had taken custody of his mother and his brother and that they were being brought to Guantánamo. It was on a letter with fake letterhead from the State Department, I believe it was. And in the letter, there was a discussion that his mother would be the only female detainee held at Guantánamo and concerns for her safety.

So, any one of these individual things, I don't believe, as a legal matter, rose to the level of torture, until I got evidence of an email between one of the officers responsible for the—for the guards that were guarding Slahi and a military psychologist. And there was this discussion over this email about the fact that Slahi was experiencing hallucinations. And then—and the psychologist, as she was giving her opinion as to this concern raised, it was clear to me that she was aware that the circumstances of Slahi's detention had been set up to such a point where he would experience these types of mental breakdown.

And at that point, I had done some research. We had another lawyer in the office, another prosecutor, who was very experienced in international law, and I had discussed the issue with him. And under the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment—it's a treaty that was ratified by the United States in 1996—under that treaty, there is a definition of torture. And under that definition of torture, it includes mental suffering. And so, as I put it all together, what I saw was the fact that Slahi ultimately began to give information after all of these different interrogation techniques had been applied to him. I came to the conclusion we had knowingly set him up for mental suffering in order for him to provide information—

AMY GOODMAN: He was also sexually humiliated.

LT. COL. STUART COUCH: —and that that met the definition under the U.N. Torture Convention.

AMY GOODMAN: Is that right? He was also sexually humiliated.

LT. COL. STUART COUCH: He was. The evidence I saw was—apparently, he had a—he had an issue about the fact that he had been unable to impregnate his wife. And the interrogators at some point learned that and then began to capitalize on that with various issues related to sexuality. There was like a room set up with photographs of male and female genitalia on the walls, a baby crib, just some kind of, you know, just bizarre types of efforts related to his sexual hang-up, if you will.

AMY GOODMAN: We're going to break and then come back to this discussion, and we'll be joined, as well as Lieutenant Colonel Stuart Couch, retired U.S. Marine Corps prosecutor, by the author of the book called *Terror Courts*, Jess Bravin of *The Wall Street Journal*. This is *D*
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Back in a minute.

[break]

JUAN GONZÁLEZ: Well, Lieutenant Colonel Couch, if you could, talk to us about your decision to tell your superiors that you did not feel you could prosecute this case because of the issues of possible torture.

LT. COL. STUART COUCH: Well, Juan, it was—again, it was sort of an incremental thing. I was receiving this information from a criminal investigator that he was gleaning through these unofficial sources. And after studying the U.N. Torture Convention, I found that there was a provision under Article 15 of the U.N. Torture Convention that said any evidence derived as a result of torture was inadmissible in any proceeding. And so, you know, I was trying to figure out, OK, what is "any proceeding"? And as I could tell from the source material behind the U.N. Torture Convention, I came to the legal conclusion that that included a military commission, as we were conducting them at that time under the president's military order of November of 2001.

I then turned to the ethical concern about what information did I need to be able to turn over to a defense counsel for Slahi in the future. And I would note, at that time, Slahi did not have a defense counsel, because we had not gone through the formal process of bringing a charge against him. So, I reviewed the pertinent ethical obligations. Under the discovery provisions of the president's military order at that time, it was evidence of his guilt known to the prosecution. And another provision was that the detainees would have a full and fair trial. And so, it was a very broad, broad construct, if you will, for discovery. As I looked at the ethical obligations that we have in the United States under the ABA Model Rules, and specifically under the rules of professional conduct of my bar, the state of North Carolina, I concluded that if I was in possession of information that, if given to his defense counsel, would allow his defense counsel to utilize those protections under Article 15 of the U.N. Torture Convention, I had that obligation to turn over to that defense counsel what I knew. And that was, again, prospective.

I was wrestling with these—with this legal issue and with this ethical issue. And then, ultimately, you know, one Sunday when I was in church, it all kind of came together. I describe myself as an evangelical Christian. I was attending a church service in the Anglican tradition, and it was a baptism of a child. And anybody who's ever been to one of these services knows that at the end of the baptism all of the congregants in the church stand up, and the pastor goes back and forth with basically the tenets of the Christian faith. And one of those tenets was that we would respect the dignity of every human being. And it was at that time, when I was professing that on Sunday, begged the question to me, if this is what you believe as a Christian, then how does that inform how you're going to act the other six days of the week? And that really, for me, was the moral point that I came to of what I had to do next.

And what I did next was I went and met with the chief prosecutor for the Office of Military Commissions. I told him my legal opinion. I told him my ethical opinion. And then I stated in—you know, I have a moral reservation at this point that what's been done to Slahi is just reprehensible, and for that reason alone, I'm going to refuse to participate in the prosecution of his case. Shortly, within a couple of days, I reduced that—those positions into writing. I provided them to the chief prosecutor. And then, after a few days, I was told to transfer that case to someone else and for me to get busy on my other cases.

JUAN GONZÁLEZ: Well, in that memorandum, you not only raised the question, you said that, quote, "If these techniques are deemed to be 'torture' under the [Geneva] Convention, then they would also constitute criminal violations of the War Crimes Act." And you went on to say, "As a practical matter, I am morally opposed to the interrogation techniques employed with this detainee and for that reason alone, refuse to participate in his prosecution in any manner." Now that must have been a bomb for you to put that into a memorandum to your supervisors in resigning from the case. What was the reaction?

LT. COL. STUART COUCH: Well, he wasn't happy about it. And—

AMY GOODMAN: And his name was?

LT. COL. STUART COUCH: —in our—that was Colonel Bob Swann. He was not happy about it. I felt like putting it into a memorandum was what I had to do to allow him to make an informed decision about the reservations that I had. My hope was that that memorandum would be shared with higher authorities over in the Department of Defense; you know, even if he didn't agree with my legal reasoning or my ethics opinion or my moral reservations, for that matter, at least to present to someone, "Hey, this is a potential issue that could be raised, and we need to be able to address that." And to my knowledge, that memorandum was never shared outside of the office.

AMY GOODMAN: So the defense never saw it, either.

LT. COL. STUART COUCH: Well, at this point, Slahi has never been charged in a military commission. He does have of counsel who represents him for a
habeas corpus

petition that he has brought in federal court, but where that memorandum went after that point, I don't know.