

ANOTHER REASON TO USE CIVILIAN COURTS

This WaPo story—which tells how Mohamedou Ould Slahi and Tariq al-Sawah got special privileges and too much fast food at Gitmo in exchange for cooperation—focuses on the things the detainees get, like Subway sandwiches, their own mint garden, and their own compound. (h/t cs) But it really points to one more reason why civilian trials may be better than military commissions: because of the ability to offer something in exchange for cooperation.

With both the underwear bomber and Najibullah Zazi, officials were eventually able to get their cooperation investigating their ties with the al Qaeda network in exchange for the possibility of leniency (and for the underwear bomber, a promise not to try for the death penalty). And Jamal al-Fadl ended up being one of the key witnesses in the Embassy Bombing trial, which helped put US-based al Qaeda figures in jail for life.

Yet with Slahi and al-Sawah, there seems to be no easy way to reflect their cooperation. Rewarding these two detainees for having cooperated is considered “a hard sell.”

“I don’t see why they aren’t given asylum,” said W. Patrick Lang, a retired senior military intelligence officer. “If we don’t do this right, it will be that much harder to get other people to cooperate with us. And if I was still in the business, I’d want it known we protected them. It’s good advertising.”

A current military official at Guantanamo suggested that that argument was fair. Still, he said, it’s “a hard-sell argument around here.”

Heck, in the case of Slahi, the government is appealing Judge Robertson’s order that he be

released.

And, as a number of sources admit later in the EPU range of this article, we simply don't have the means to account for cooperation in our disposition of higher level al Qaeda detainees.

A Justice Department-led review of the cases of all detainees at Guantanamo Bay, which recently wrapped up, decided that Sawah and Slahi are owed no special treatment. An administration official, speaking before the federal court ruling on Slahi, said the government wants either to prosecute them or to hold them in some form of indefinite detention without charge.

Some current and former military officials say there should be other options. The treatment of high-profile informants such as Sawah and Slahi, they argue, will affect the government's ability to turn other jihadists.

"We are much behind in discussing and working out details of some form of witness protection program for the most potentially important and in-danger witnesses," said a military official who has served at Guantanamo.

The former chief military prosecutor at Guantanamo, Lawrence Morris, said officials always weighed a detainee's cooperation, particularly its quality and timeliness, before making a charging decision.

"We were not heedless to other factors, but our job was to make our best judgment from a criminal standpoint," said Morris, who noted that the decision to bring a case against Sawah came after prolonged deliberation and consultation with intelligence officials.

So instead of providing an incentive for al

Qaeda insiders to flip in exchange for special treatment, we instead push for indefinite detention for them (albeit detention softened by fast food). And we're left with the kind of intelligence hack contractors can collect in the field rather than real inside information.