

Military show trial of Hamdan opens at Guantánamo Bay

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The “war crimes trial” of Salim Ahmed Hamdan began Tuesday after a military judge ruled on Monday that the drumhead military tribunal may go forward at the US base in Guantánamo Bay, Cuba. Hamdan, who was allegedly Osama Bin Laden’s personal driver at the time of the US invasion of Afghanistan, has pleaded innocent to charges of conspiracy and material support for terrorism. He faces life imprisonment if convicted.

The trial is being referred to as “Hamdan II.” The administration failed in an earlier attempt to try Hamdan before a military tribunal after he won an injunction in 2004 in the case *Hamdan v. Rumsfeld*. Eventually the Supreme Court ruled in a split decision that the trial of Hamdan must meet the standards of a military court martial, and that the military tribunal system as then constituted was inadequate. That failure led to the enlistment of Congress to lend legitimacy to the military tribunal system through the passage of the Military Commissions Act of 2006, which has paved the way for the retrying of Hamdan.

The trial marks the first time in the seven years of the so-called “war on terror”—during which scores of prisoners have been held at Guantánamo Bay—that a “detainee” has actually faced any sort of trial. The Bush administration has systematically blocked every effort for the inmates to receive legal redress, either through civilian or international courts, the judicial systems of their native lands, or, until Hamdan, the newly-devised military tribunals.

This has not stopped supporters of the prisoners’ rights from launching suit in the US and a number of nations. Whenever such cases have seen the light of day, US charges against the prisoners have been thoroughly discredited and the barbaric conditions of Guantánamo revealed.

Not coincidentally, on the same day that the Hamdan trial was allowed to proceed, Attorney General Mukasey called for the establishment of single court that would process all Guantánamo inmates’ appeals. This is in spite of the fact that the Bush administration and the military have refused to abide by any legal decision coming from the US or anywhere else challenging the legitimacy of the inmates’ indefinite detention without trial. The Bush administration bases itself on the Orwellian categorization of the inmates as “enemy

combatants,” a status which the US holds removes the inmates from the jurisdiction of both domestic and international law.

US soldiers captured Hamdan, then 33 years old and the father of two children, on a highway in Afghanistan in late 2001. The prosecution claims he had two surface-to-air missiles in the trunk of his car. Hamdan was severely beaten in Afghanistan, likely under the supervision of US military officials. In the airplane trip from Afghanistan to Guantánamo, Hamdan says he was blindfolded and tied down in a position that inflamed a back injury, a position that produced such “severe pains,” he said, “that I cannot really explain.”

Hamdan’s experiences conform down to their detail with other accounts of the systematic torture practiced at Guantánamo. Hamdan’s attorneys revealed much of his story in a failed attempt last week for an injunction to move the trial forward in federal court rather than in the Guantánamo military tribunal (See “US judge rules Guantánamo military tribunal can proceed”).

Hamdan, Yemeni by birth, has been imprisoned at the Guantánamo prison camp for six years. As part of the process of “breaking” the inmates, military guards frequently and inexplicably move them from one “camp” to another within the prison. Hamdan described one of his places of confinement, Camp Echo, as “a graveyard where you place a dead person in a tomb.” Of another site he said, “you can only see the soldiers. And, of course, I was never able to see the sun.” He has faced solitary confinement for the majority of his time at Guantánamo. Hamdan’s attorneys say that as a result of this severe isolation he has become incapable of focusing on his case.

Military officials failed to deny Hamdan’s attorneys allegations that he was subjected in 2003 to “Operation Sandman”—a program of sleep deprivation for 50 days.

During his imprisonment, Hamdan was denied any means of understanding the passage of time. A *New York Times* reporter noted that he seemed to be confused about the years in which the events of his incarceration took place. Additionally, he has faced sexual humiliation at the hands of a female interrogator, and has reported that inmates are allowed only a towel, a toothbrush, and a blanket, but that these few items are frequently taken away.

There is no chance that Hamdan will receive a fair trial at the hands of a jury comprised of senior US military officers. The entire affair is prejudiced against Hamdan and designed to secure a guilty verdict.

Defense attorneys have criticized the jury selection process. The jury includes officers compromised by their personal connections to the “war on terror.” One juror, a colonel who came under enemy fire in Iraq, confessed that he did not know if he could disassociate the charges against Hamdan from his own battle experience in Iraq. The prosecution has expressed satisfaction with the jurors selected.

The first day of trial proceedings on Tuesday revealed the process to be the modern equivalent of the notorious Star Chamber. Prosecution presented jurors with secret evidence—purportedly photographs—sealed in red envelopes. This “evidence” is unavailable to either Hamdan or the public and therefore there is no way of discerning its authenticity.

Prosecution also began examination of its star witness—who is anonymous. Ludicrously named “Sergeant Major A,” the witness purports to have been present—but under disguise—while Afghans interrogated, and presumably tortured, Hamdan into confessing. Defense attorneys have no way of challenging the validity of “Sergeant Major A’s” testimony, since information about his supposed presence at the confessions remains classified. Much of the prosecution’s case hinges on the threadbare assertion that Hamdan, as bin Laden’s driver, overheard plans for the 9/11 attacks.

The trial goes forward under a veil of semi-secrecy. Unlike a civilian court, the public has no right to attend the trial and has been shut out by the military. The media, meanwhile, are handpicked and vetted, and sworn to abide by court orders maintaining the confidentiality of aspects of the trial. For example, the media may not reveal the identity of the military commission jurors who will ultimately render a decision on Hamdan’s fate. According to the *New York Times*, reporters are “escorted at all times—to court, to meals and, occasionally, to the beach.”

Even should Hamdan improbably prevail before the military tribunal, he would simply revert to his status as an enemy combatant and prisoner at Guantánamo, a legal status the Bush administration promises will go on so long as the “war on terror” continues—i.e., indefinitely.

The Judge, Navy Captain Keith J. Allred, perhaps in an attempt to lend a shred of credibility to what amounts to a politically motivated show trial, has disallowed certain confessions extracted from Hamdan while he was tortured in Afghanistan. These evidently do not include those ostensibly observed by “Sergeant Major A.” Allred admitted that the disallowed confessions arose from a situation in which Hamdan was bound for 24 hours a day and physically compelled to speak.

The judge, however, rejected defense attorneys’ appeals that similar confessions extracted from Hamdan at Guantánamo,

where the same brutal methods prevail, be thrown out. Indeed, the entire prison camp operation is a spectacle of brutality and human debasement, which has attracted widespread international condemnation.

The decision to allow Guantánamo confessions is far more significant than the judge’s limited concession on coerced confessions from Afghanistan. Allred has in essence ruled that the Guantánamo detainees have no Fifth Amendment rights and no right against self-incrimination in general, a core legal principle that would tend to invalidate much of the prosecution’s evidence if the trial were to proceed in domestic courts. Furthermore, the decision gives an implicit go-ahead to carry on the same coercive methods—i.e., torture—at Guantánamo.

Captain Allred ruled that there was nothing inherently coercive about these methods, cynically asserting that there was only “an apparent correlation” between medical treatment made available to Hamdan and his cooperation with interrogators. To Allred, this was but “the natural consequence of agents seeking to help detainees in order to build rapport.”

The lack of protection against self-incrimination has already caused a moment of embarrassment for the government in the trial. Ali Soufan, an FBI agent who interrogated Hamdan at Guantánamo, confessed that in the course of his career it has been the only place where he did not inform suspects that they had a right against making statements that might self-incriminate. A government prosecutor then responded with the rhetorical question: “All right, that’s a different court system than the commission system here?”

According to the *Wall Street Journal*, Soufan won confessions from Hamdan in part by bringing him food from McDonald’s, sending him an automotive magazine, and allowing him to call his wife—with whom he presumably had not spoken in years.

In terms of evidence, the government’s case against Hamdan is weak, and based almost entirely on raw accusation and evidence extracted through self-incrimination under severe conditions. That this is the handpicked show trial designed to pave the way for dozens more Guantánamo cases suggests that the vast majority of inmates held there are innocent.



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