

# Guantánamo trial sentence stuns Bush administration

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A jury of six military officers sentenced Guantánamo prisoner Salim Hamdan to five and one-half years in prison, making him eligible for release before the end of this year, since he has been given credit for five years and one month already served. The decision clearly stunned military prosecutors, who had argued for a 30-year jail term.

The sentence represented a jury validation of the arguments made by defense attorneys, who said that the 40-year-old Yemeni was merely a menial employee of Osama bin Laden, not a member of Al Qaeda, let alone one of the leading terrorists—"the worst of the worst"—whom the Pentagon claims to have incarcerated in Guantánamo.

The jury had already given a rebuff to the Bush administration with its verdict, acquitting Hamdan of two conspiracy counts and finding him guilty only of the charge that the defendant essentially admitted in court—that he had worked as a driver for Osama bin Laden for several years before the 9/11 terrorist attacks.

Following the verdict, the trial judge, Navy Capt. Keith J. Allred, consolidated the five "specifications" of material support approved by the jury into a single count, and instructed them to determine the sentence accordingly, although they could still have imposed a life sentence. He also told the jurors that he would credit Hamdan with more than five years in Guantánamo since he was first charged.

The judge refused to credit Hamdan with the time served before he was charged—he was first seized by US military forces in Afghanistan in November 2001—and he postponed action on a defense request to give three to five months credit for every month Hamdan was held in solitary confinement or subjected to abusive interrogation.

The debate over that issue featured the Orwellian

language that is characteristic of the Bush administration's conduct in its bogus "war on terror." A spokeswoman for the Navy command at Guantánamo said that Hamdan had never been in solitary confinement since there are no such cells at the base prison, only "single-occupancy cells."

The sentencing hearing extended over Wednesday afternoon and Thursday after the guilty verdict was returned. Prosecutor John Murphy called Hamdan "a hardened Al Qaeda member" and appealed to the jurors—two colonels and three lieutenant-colonels from the Air Force and Army and a Navy captain—to deliver a punitive message to the world.

"You have found him guilty of offenses that have made our world extremely unsafe and dangerous," he said. "The government asks you to deliver a sentence that will absolutely keep our society safe from him... Your sentence should say the United States will hunt you down and give you a harsh but appropriate sentence if you provide material support for terrorism."

Showing graphic images of the 9/11 terrorist attacks and the 1998 attacks on US embassies in East Africa, he reminded the jurors of the victims of these Al Qaeda atrocities, concluding, "Your sentence will be their justice. Your work is our justice, and you shouldn't flinch from it."

In the context of such an appeal to raw vengeance, the sentence imposed by the jurors is all the more remarkable. One unidentified juror who spoke to the *Wall Street Journal* after the sentencing said that the evidence did not support the description of Hamdan as a hard-core terrorist.

Equally striking was the exchange between the trial judge and the defendant after the sentence was announced. Hamdan rose to make a statement in Arabic, repeating the apology to the victims of 9/11

which he had made earlier in the trial.

As he closed the hearing, Captain Allred said, “Godspeed, Mr. Hamdan. I hope the day comes that you are able to return to your wife and daughters and your country.”

Hamdan said, “Inshallah,” (“God willing,” in Arabic), and Allred responded, “Inshallah,” before the interpreter could give the English translation.

Hamdan’s fate now lies with the Pentagon and the White House, which could detain him in Guantánamo indefinitely as an “enemy combatant” once his current sentence expires in December. Navy commander Charles Swift, one of the defense team, said, “It was all for show if Mr. Hamdan does not go home in December.”

A Pentagon spokesman said that no decision had been made about whether to release Hamdan when his sentence expires. The jury verdict demonstrates that there is no validity to Hamdan’s classification as an “enemy combatant,” but the Bush administration claims that it has unlimited and unreviewable authority to make such a determination.

Another Hamdan lawyer, Joseph McMillan, argued out that an extension of Hamdan’s detention would violate “the notion of fundamental fairness,” and he compared the current case to the sentence imposed on Australian David Hicks, who was transferred to his home country and released after serving nine months, rather than held indefinitely.

The American press reported the sentence against Hamdan as “a stunning rebuke to prosecutors,” in the words of the *Washington Post*. In an editorial Sunday, the newspaper, a right-wing defender of the war in Iraq, urged the Bush administration to let Hamdan go in December—not so much because continuing to detain him would be unjust, but because it would further discredit US policy in the “war on terror.”

“To hold a man who has been judged to be of minimal risk to the country would make a mockery of the legal proceedings just completed,” the newspaper argued.

The Bush administration, for its part, plans to press ahead with the next trial scheduled at Guantánamo, in which the defendant is even further from the stereotype of terrorist mastermind than Hamdan. Omar Khadr, a Canadian citizen whose father brought him to Afghanistan as an adolescent, was captured by US

forces at age 15. He faces charges of throwing a grenade that killed a US soldier there in 2002. Even if the charge were true, this would amount only to armed resistance to an invasion, not terrorism or war crimes.

Both the US and Canadian governments have refused to invoke international conventions that require that child soldiers are regarded as victims, not responsible for their actions in combat, and that bar treating them as though they were adults.



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