

# On the scene at Guantanamo Bay



By Julia Hall '96

Osama bin Laden's driver, Salim Hamdan, had been at Guantanamo Bay for 6½ years when his trial by military commission commenced on July 21. My organization, Human Rights Watch, was granted permission to monitor L'Affaire Hamdan, and I was the anointed monitor.

Hamdan's trial was the culmination of a period in U.S. history marked by the tragedy of 9/11, but the victims of that crime would not see accountability with a Hamdan conviction. The military commission's unfair rules – and the abuse Hamdan suffered in Afghanistan and at Gitmo – doomed it from the start.

The panel of military officers who eventually convicted Hamdan on Aug. 6 for providing material support to al-Qaida (and acquitted him on conspiracy charges) must have understood how the deck was stacked against him: Hamdan got 5½ years, but neither the lowly driver nor al-Qaida's victims got real justice.

Judge Keith Allred, a Navy captain, bounded into the courtroom every morning in full black robes. He winked at Hamdan every day as a ritual greeting. The courtroom scene looked familiar: judge, jury, dark-paneled courtroom, "Objection," "Overruled." But the differences were surreal: an offshore prison camp for terrorism suspects not far away, many inmates subjected to "enhanced interrogation techniques" amounting to torture, a jury of military officers in full dress handpicked by the Pentagon, and rules that clearly violated due process.

Watching the two Hamdan "capture videos" on the second day of the trial was harrowing. The videos document interrogations by U.S. military personnel in Afghanistan. In the grainy black-and-white film, they show Hamdan slumped on the floor,

hooded and shackled, as he is badgered by his Arabic-speaking military interrogator in a dark room with one dim light bulb overhead.

After removing the hood, the interrogator begins the questioning, only to be interrupted several times by Hamdan, who asks if he can change positions, move his legs and rub his foot. There is a sickening sense that Hamdan, visibly scared, is trying out ideas as they occur to him in an attempt to avoid more abuse.

The defense, dubbed "Team Hamdan," strenuously objected to the admission of these tapes as evidence. According to military commissions' rules, evidence obtained through torture can't be admitted. But although Judge Allred acknowledged that Hamdan was subjected to "coercive treatment," he said the rules allow coerced testimony if it is deemed "reliable" and in "the interests of justice."

That first week of trial, both prosecution and defense made veiled references to a May 2003 interrogation of Hamdan. Judge Allred had yet to decide whether the prosecution could offer the fruits of that interrogation as evidence, due to concerns about coercion. The government wanted to put Robert McFadden of the Naval Criminal Investigative Service on the stand, claiming he could provide "clear and convincing evidence" that nothing elicited from that interrogation was coerced.

The government made its case in the second week of trial. Human Rights Watch's monitor for that week reported that McFadden described a cordial, friendly and "free-flowing" conversation in 2003, in which Hamdan admitted he had pledged bayat (an oath of loyalty) to Osama bin Laden and that he was carrying missiles to bin Laden when he was captured.

Team Hamdan challenged McFadden's testimony, arguing that Hamdan

had been sexually harassed by a female interrogator and subjected to sleep deprivation in the days prior to McFadden's interrogation. But the judge allowed McFadden to testify.

The defense did its best to cast doubt on Hamdan's role in al-Qaida and on the fairness of the military commissions process. I was struck not only by the inconsistencies in the prosecution's case, but by clear evidence of governmental ineptitude.

Would the jury be surprised to learn that Hamdan's boss, Abdullah Tabarak, had himself been detained at Guantanamo Bay but was sent home to Morocco in 2004? Did they know that Khalid Sheikh Mohammed, the alleged mastermind of 9/11 currently in prison at Gitmo, called Hamdan a "bedouin" not fit "to plan or execute" outside operations (code for terrorist activities outside Afghanistan)?

Given Hamdan's partial acquittal and sentence, these revelations must have disturbed the jury. But the trampling of rights at Guantanamo Bay has so permeated the national consciousness (if not its conscience) that such abuse seems almost commonplace.

Salim Hamdan's conviction and sentence leave several questions unanswered. The judge gave Hamdan time served from the point at which he was formally charged in 2003, which reduced his sentence to five months. But the Bush administration maintains that as an "unlawful enemy combatant," Hamdan can be held until the end of hostilities with al-Qaida, which may mean indefinitely.

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