

## Hamdan cont. from p. 33

which Hamdan has been charged is not an "offens[e] that by ... the law of war may be tried by military commissions." ...

[46] Hamdan is alleged to have acted as Osama bin Laden's "bodyguard and personal driver,"

[114] The charge against Hamdan ... alleges a conspiracy extending over a number of years, ... All but two months of that more than 5-year-long period preceded the attacks of September 11, 2001 ... None of the overt acts that Hamdan is alleged to have committed violates the law of war.

[115] These facts alone cast doubt on the legality of the charge and, hence, the commission; ... the offense alleged must have been committed both in a theater of war and during, not before, the relevant conflict. But the deficiencies in the time and place allegations also underscore — indeed are symptomatic of — the most serious defect of this charge: The offense it alleges is not triable by law-of-war military commission. ...

[127] If anything, *Quirin* supports Hamdan's argument that conspiracy is not a violation of the law of war. Not only did the Court pointedly omit any discussion of the conspiracy charge, but its analysis of Charge I placed special emphasis on the completion of an offense; it took seriously the saboteurs' argument that there can be no violation of a law of war — at least not one triable by military commission — without the actual commission of or attempt to commit a "hostile and warlike act." *Id.*, at 37-38.

[134] Far from making the requisite substantial showing, the Government has failed even to offer a "merely colorable" case for inclusion of conspiracy among those offenses cognizable by law-of-war military commission. ... Because the charge does not support the commission's jurisdiction, the commission lacks authority to try Hamdan.

[139] The commission's procedures are set forth in Commission Order No. 1, which was amended most recently on August 31, 2005 — after Hamdan's trial had already begun. ...

[141] Another striking feature of the rules governing Hamdan's commission is that they permit the admission of any evidence that, in the opinion of the presiding officer, "would have probative value to a reasonable person." ... Under this test, not only is testimonial hearsay and evidence obtained through coercion fully admissible, but neither live testimony nor witnesses' written statements need be sworn. ... Moreover, the accused and his civilian counsel may be denied access to evidence ... and that its admission without the accused's knowledge would not "result in the denial of a full and fair trial." ...

[142] ... A two-thirds vote will suffice for both a verdict of guilty ... Any appeal is taken to a three-member review panel composed of military officers ... only one member of which need have experience as a judge. ...

[164] Under the circumstances, then, the rules applicable in courts-martial must apply. ...

[165] ... That Article not having been complied with here, the rules specified for Hamdan's trial are illegal. ...

[167] The procedures adopted to try Hamdan also violate the Geneva Conventions.

[171] ... The United States, by the Geneva Convention of July 27, 1929, ... concluded with forty-six other countries, ... an agreement upon the treatment to be accorded captives. These prisoners claim to be and are entitled to its protection.

[185] Inextricably intertwined with the question of regular constitution is the evaluation of the procedures governing the tribunal and whether they afford "all the judicial guarantees which are recognized as indispensable by civilized peoples." ...

[190] ... But in undertaking to try Hamdan and subject him to criminal punishment, the

## Hamdan Decision Foretold By Guantanamo Prosecutor Complaints

In 2004 three Guantanamo Bay military prosecutors were transferred after they expressed concerns about the legality of procedures established for the trial of detainees.

Air Force Major Robert Preston, emailed his superior, "I consider the insistence on pressing ahead with cases that would be marginal even if properly prepared to be a severe threat to the reputation of the military justice system and even a fraud on the American people."


A second prosecutor, Air Force Captain John Carr, emailed his superior, "You have repeatedly said to the office that the military panel will be handpicked and will not acquit these detainees ...." Capt. Carr also wrote that defendants weren't provided with exculpatory evidence in documents withheld from disclosure for national security reasons by the CIA, and that notes by military staff and statements by detainees concerning torture and abuse disappeared.

A third prosecutor, Air Force Captain Carrie Wolf, also expressed concerns about the legality of the trial process to her superior.

The trial procedures denying even the appearance of "due process," were too rigged for the three military prosecutors to stomach. The Supreme Court majority in *Hamdan* concluded similarly, "the rules specified for Hamdan's trial are illegal."

See: Three Prosecutors Reassigned After Protesting Rigged Guantanamo Trials, *Justice Denied*, Issue 29, Summer 2005, p. 14.

Executive is bound to comply with the Rule of Law that prevails in this jurisdiction.

[191] The judgment of the Court of Appeals is reversed, and the case is remanded for further proceedings. 

This is the story of Karlyn Eklof, a young woman delivered into the hands of a psychotic killer by traffickers in porn and mind control. She witnessed a murder and is currently serving two life sentences in Oregon for that crime. *Improper Submission* by Erma Armstrong documents:

- The way the killer's psychotic bragging was used by the prosecution to define the case against Karlyn.
- The way exculpatory evidence was hidden from the defense.
- The way erroneous assertions by the prosecution were used by the media, by judges reviewing the case, and even by her own lawyers to avoid looking at the record that reveals her innocence.
- The ways her appeal lawyers have denied any input that would require them to investigate official misconduct.
- Her case is classic example of coercion and denial of civil rights.

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