

## WV Supreme Court Slapped Down For Ignoring Brady Disclosure Obligation

Denver Youngblood was convicted in 2003 of sexual assault, brandishing a firearm and indecent exposure. Youngblood learned after his trial that the prosecution had not informed him about a one-page handwritten note by an eyewitness and friend of the alleged victim. The note contained evidence that the crimes Youngblood had been convicted of committing had not even occurred. Thus the note supported Youngblood's claim of innocence and could have been used to impeach the alleged victim's testimony.

After discovering existence of the note and its contents, Youngblood filed a motion for a new trial on the basis that the prosecution violated its legal obligation to disclose the note's existence under *Brady v. Maryland*, 373 U.S. 83 (1963). The trial judge denied the motion on the basis that the prosecution hadn't committed a *Brady* violation because the note constituted impeachment evidence only, and thus the failure to disclose its existence didn't constitute grounds for a new trial.

In affirming Youngblood's conviction, the West Virginia Supreme Court ruled in 2005 that the trial judge did not abuse his discretion by denying a new trial. Relying on an 1894 state case, the Court majority reasoned, "the new trial will generally be refused when the sole object of the new evidence is to discredit or impeach a witness on the opposite side."<sup>1</sup> By the way it handled the issue of the undisclosed note, the Court sidestepped considering Youngblood's claim that its concealment was a constitutional *Brady* due process violation.

However, in his dissent, Justice Davis tackled Youngblood's claim of a *Brady* violation head on. He wrote,

"I believe the writing provided both exculpatory and impeachment evidence. However, assuming for the sake of argument that the writing was purely impeachment evidence, under *Brady* and its progeny, due process still required its disclosure. ... In fact, the United States Supreme Court has expressly 'disavowed any difference between exculpatory and impeachment evidence for *Brady* purposes.'<sup>2</sup>

Youngblood appealed to the U.S. Supreme Court. On June 19, 2006, the Court issued a GVR (Grant, Vacate and Remand) ruling, *Youngblood v. West Virginia*, No. 05-6997 (U.S. 06/19/2006), on the basis of the written briefs, and without oral arguments:

The trial court denied Youngblood a new trial, saying that the note provided only impeachment, but not exculpatory, evidence. The trial court did not discuss *Brady* or its scope, but expressed the view that the investigating trooper had attached no importance to the note, and because he had failed to give it to the prosecutor the State could not now be faulted for failing to share it with Youngblood's counsel.<sup>3</sup>

... A *Brady* violation occurs when the government fails to disclose evidence materially favorable to the accused. See 373 U.S., at 87. This Court has held that the *Brady* duty extends to impeachment evidence as well as exculpatory evidence, *United States v. Bagley*, 473 U.S. 667, 676 (1985), and *Brady* suppression occurs when the government fails to turn over even evidence that is "known only to police investigators and not to the prosecutor," *Kyles v. Whitley*, 514 U.S. 419, 438 (1995). See *id.*, at 437 ("[T]he

individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police"). "Such evidence is material 'if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different,'" *Strickler v. Greene*, 527 U.S. 263, 280 (1999) (quoting *Bagley*, supra, at 682 (opinion of Blackmun, J.)), although a 'showing of materiality does not require demonstration by a preponderance that disclosure of the suppressed evidence would have resulted ultimately in the defendant's acquittal,' *Kyles*, 514 U.S., at 434. The reversal of a conviction is required upon a "showing that the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict." *Id.*, at 435.

Youngblood clearly presented a federal constitutional *Brady* claim to the State Supreme Court. ... We, therefore, grant the petition for certiorari, vacate the judgment of the State Supreme Court, and remand the case for further proceedings not inconsistent with this opinion.<sup>4</sup>

Interestingly, the three dissenters, Scalia, Thomas and Kennedy, didn't do so because they disagreed with the substance of the Court's decision about Youngblood's *Brady* claim. They objected to the use of the GVR procedure to expedite resolution of the case.

### Endnotes:

- 1 *State v. Youngblood*, 618 S.E.2d 544, 217 W.Va. 535 (W.Va. 06/24/2005); 2005.WV.0000065 ¶ 83 <<http://www.versuslaw.com>>
- 2 *Id.* at ¶ 115 <<http://www.versuslaw.com>>
- 3 *Youngblood v. West Virginia*, No. 05-6997 (U.S. 06/19/2006); 2006.SCT.0000111 ¶ 11 <<http://www.versuslaw.com>>
- 4 *Id.* at ¶ 14-15 <<http://www.versuslaw.com>>



*Salim Ahmed Hamdan v. Donald H. Rumsfeld*, No. 05-184, 548 U.S. \_\_\_\_ (U.S. 06/29/2006)

[3] 2006.SCT.0000136<[www.versuslaw.com](http://www.versuslaw.com)>

[35] Petitioner Salim Ahmed Hamdan, a Yemeni national, is in custody at an American prison in Guantanamo Bay, Cuba. In November 2001, during hostilities between the United States and the Taliban (which then governed Afghanistan), Hamdan was captured by militia forces and turned over to the U. S. military. In June 2002, he was transported to Guantanamo Bay. Over a year later, the President deemed him eligible for trial by military commission for then-unspecified crimes. After another year had passed, Hamdan was charged with one count of conspiracy "to commit ... Offenses triable by military commission." ...

## Supreme Court Nixes Guantanamo Bay Military Commissions

[36] Hamdan filed petitions for writs of habeas corpus ... His objection is that the military commission the President has convened lacks such authority, for two principal reasons: First, neither congressional Act nor the common law of war supports trial by this commission for the crime of conspiracy — an offense that, Hamdan says, is not a violation of the law of war. Second, Hamdan contends, the procedures that the President has adopted to try him violate the most basic tenets of military and international law, including the principle that a defendant must be permitted to see and hear the evidence against him.

[37] The District Court granted Hamdan's request for a writ of habeas corpus. ... The Court of Appeals for the District of Columbia Circuit reversed. ... Recognizing, as we did over a half-century ago, that trial by military commission is an extraordinary measure raising important questions about the balance of powers in our constitutional structure, *Ex parte Quirin*, 317 U.S. 1, 19 (1942), we granted certiorari.

[38] For the reasons that follow, we conclude that the military commission convened to try Hamdan lacks power to proceed because its structure and procedures violate both the UCMJ [Uniform Code of Military Justice] and the Geneva Conventions. Four of us also conclude ... that the offense with

**Hamdan cont. on p. 44**

## 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.

Paperback, 370 pages

Send \$10 (postage paid) (check, money order or stamps) to:  
Tanglewood Hill Press  
170 W. Ellendale, Suite 103, PMB 410  
Dallas, OR 97338



The Poverty Postal Chess League has enabled chess players to play each other by mail since 1977. Membership is \$5/yr; \$2.50 for remainder of 2006 (stamps OK). Members receive a quarterly newsletter and can enter all tournaments or challenge others to a game. Write:

PPCL  
c/o J Klaus  
12721 E. 63rd St  
Kansas City, MO 64133