

Guantanamo Detainee Lawyer Claims Prosecutions Are Political Show Trials

The lawyer for Guantanamo Bay detainee Salim Hamdan filed a motion on March 27, 2008 to dismiss the charges against Hamdan. The motion asserts that political influence over Hamdan's prosecution deprives him of his right to a fair trial. The motion alleges that the Bush administration exercises "unlawful command influence" over the proceedings, and that White House officials are orchestrating Hamdan's military commission trial for maximum political benefit. Republican candidates claiming to be tough on terrorism could be boosted by Hamdan's conviction prior to the November 2008 elections.

In the motion Hamdan's attorney, Navy Lt. Brian Mizer, quotes Bush appointee Deputy Defense Secretary Gordon England telling military prosecutors, "We need to think about charging some of the high-value detainees because there could be strategic political value to charging some of these detainees before the election."

Former chief Guantanamo prosecutor Air Force Col. Morris Davis resigned in October 2007 because of political interference in the military commission trial process. Among other things he said he was pressured to pursue weak "sexy" high-profile cases, and since convictions were expected, "I felt I was being pressured to do something less than full, fair and open."

Davis is scheduled to be a pretrial witness for Hamdan. Davis says he welcomes the "opportunity to tell the truth" about how the prosecutions are being conducted.

Prior to Davis' resignation, three Guantanamo prosecutors were transferred in 2004 after they protested the military tribunal procedures that they said were tilted to ensure convictions. One of the reassigned prosecutors, Air Force Captain John Carr, wrote to his superior: "When I volunteered to assist with this process and was assigned to this office, I expected there would at least be a minimal effort to establish a fair process and diligently prepare cases against significant accused. Instead, I find a half-hearted and disorganized effort by a skeleton group of relatively inexperienced attorneys to prosecute fairly low-level accused in a process that appears to be rigged. You have repeatedly said to the office that the military panel will be handpicked and will not acquit these detainees and that we only

needed to worry about building a record for the review panel."

Another of the reassigned prosecutors, Air Force Major Robert Preston, wrote to 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."

Davis' resignation suggests that nothing has fundamentally changed in the way the Guantanamo prosecutions are being handled than they were when those prosecutors were reassigned almost four years.


Hamdan is one of the "low-level accused" that Carr was referring to. He is charged with conspiracy and supporting terrorism because he worked at one time as a driver for Osama bin Laden. Hamdan's alleged crimes are the result of his proximity to bin Laden, because the government does not allege that he had any role in planning or carrying out any attacks against the United States or U.S. military personnel. Hamdan faces up to life in prison if convicted by the tribunal.

In April 2008 Hamdan "walked out" of a pre-trial hearing, saying he didn't believe a fair trial was possible with the tribunal process.

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

Sources: Gitmo trials pegged to '08 campaign, *Miami Herald*, March 28, 2008. Detainee's lawyer claims charges are about politics, *Seattle Times*, March 29, 2008. Ex-Prosecutor Alleges Pentagon Plays Politics, *Washington Post*, October 20, 2007.

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Dallas DA Admits Innocent People Are Prosecuted For Sport

Craig Watkins, elected in 2006 as the District Attorney for Dallas County, Texas, gave a remarkable interview published in *Reason Online* in which he acknowledged what many people have long suspected: there are prosecutors who get a kick out of prosecuting a person they know is innocent. Watkins said, "Oh yeah, it was a badge of honor at the time—to knowingly convict someone that wasn't guilty." He also acknowledged that he had to clean house when he took office because his predecessor fostered a culture of "convict at all costs."

Watkins established a "Conviction Integrity Unit" in the district attorneys office staffed by two attorneys and two investigators. The unit ferrets out cases of wrongful conviction, and trains other DAs in their responsibility to disclose exculpatory evidence and in general to seek the truth, and not just notch another conviction on their belt.

The April 7, 2008 interview by Radley Balko, "Is This America's Best Prosecutor? - Meet Dallas County District Attorney Craig Watkins," is on *Reason* magazine's website at, www.reason.com/news/show/125596.html

Prosecutor Immunity Considered By Sup. Ct.

After 24 years of wrongful imprisonment Thomas Goldstein was exonerated of murder in 2004 based on his post-conviction discovery that the prosecution's key witness was an experienced jailhouse snitch who lied that he wasn't rewarded for his testimony. Goldstein then filed a federal civil rights lawsuit against the Los Angeles County district attorney from 1975 to 1983 and his top deputy. Goldstein alleged his rights were violated by the prosecutors failure to administer a system for sharing information on whether informants had been used before and had been given promises in exchange for their testimony. The District Court refused to dismiss the lawsuit on the basis of prosecutorial immunity, ruling Goldstein was seeking damages for administrative and not trial related duties. After the 9th Circuit affirmed the District Court's ruling, the U.S. Supreme Court granted the prosecutor's writ of certiorari to decide the question of whether absolute prosecutorial immunity extends to administrative functions. The Court will issue its ruling in the summer of 2008.

Source: Supreme court to hear Los Angeles County district attorney immunity case, *Los Angeles Times*, April 15, 2008.