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Detainee's Trial in Military System Begins Today

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GUANTANAMO BAY, Cuba -- Nearly seven years after [President Bush](#) declared an "extraordinary emergency" that empowered him to bring terrorists before military judges, [Osama bin Laden](#)'s former driver is scheduled to go on trial Monday in the first test of whether that system can dispense fair and impartial justice.

When [Salim Ahmed Hamdan](#), accused of ferrying weapons for [al-Qaeda](#), enters courtroom 01-A in a former aircraft operations center, he will face court proceedings unlike any the United States has seen in decades. They will unfold before a military commission -- the first since the end of World War II -- with a jury of uniformed officers and rules that give great deference to the prosecution. Evidence obtained from "cruel" and "inhuman" interrogation methods is admissible in certain circumstances, as is hearsay evidence.

Unlike a civilian trial, even if the defendant is acquitted of conspiracy and material support of terrorism charges, he probably will not be released. Hamdan has been designated an "enemy combatant" by the military, a status that prosecutors said would be unchanged by an acquittal even if international pressure mounts for his release.

The trial in a small, windowless courtroom is a step in the administration's legal efforts against terrorism. Pretrial hearings last week gave a glimpse into the workings of the controversial U.S. detention facility here, with Hamdan testifying that he was abused by his jailers and with prosecutors saying he was not.

Yet the proceedings are also something of a dry run, a way to test the long-delayed military system on an alleged low-level al-Qaeda foot soldier so it is primed for the self-confessed terrorist leaders to come. In line behind Hamdan at [Guantanamo](#) is [Khalid Sheik Mohammed](#), self-proclaimed mastermind of the Sept. 11, 2001, attacks and other accused planners.

"It's the first contested war crimes trial since World War II, so it's important," Col. Lawrence Morris, the military commissions' chief prosecutor, said recently. "You're looking at it primarily and appropriately as bringing Mr. Hamdan to justice, but we're also well aware that . . . it provides the first opportunity to test and validate this mechanism."

Whatever the verdict in the trial of Hamdan -- a Yemeni father of two whose lawyers insist was only a hired chauffeur for bin Laden -- opponents of the commissions have already pronounced them a failure. Human rights activists and European leaders have long considered the system a legal sham designed to secure convictions.

"This was supposed to be the premier system for bringing to justice the masterminds of the worst crime ever committed on U.S. soil," said Tom Malinowski, Washington advocacy director for [Human Rights Watch](#). "The only result in seven years was the conviction of an Australian kangaroo trapper, who is now free."

He was referring to Australian [David M. Hicks](#), who last year pleaded guilty to a terrorism charge in the only Guantanamo case to be fully adjudicated. Hicks was sent to Australia as part of a political deal and

was later released from prison there.

Defenders of the commissions point to layers of due process -- including the right to appeal a conviction to federal court -- that Congress added since Bush proposed the panels. Proponents of the new system say people who committed heinous acts against the United States do not deserve the constitutional protections of its federal courts.

"I find it ironic that there is this tremendous rush to unfairly discount a very well-thought-out military system," said D. Hamilton Peterson, of Bethesda, whose father and stepmother were killed on the hijacked airplane that crashed in a Pennsylvania field on Sept. 11. "Mr. Hamdan and these other suspects are getting more due process than any of the people who were beheaded by the terrorists in Iraq and Afghanistan."

The trial of Hamdan, who faces a maximum of life in prison if convicted, is unfolding in a different political climate than when Bush invoked emergency powers after Sept. 11. His directive on Nov. 13, 2001, said non-U.S. citizens could be subject to commissions, with no judicial review and no prohibition on evidence gleaned through torture, though it said they would be treated "humanely."

Bush had hoped for swift justice for captured terrorists, but the process became mired in legal and diplomatic delays. U.S. officials had to negotiate with Britain and Australia over detainees from those countries. And in a lawsuit brought by Hamdan's attorneys, the Supreme Court in 2006 struck down the commission system, ruling that it was not authorized by federal law and that it ran afoul of the Geneva Conventions.

Congress reacted by passing the Military Commissions Act of 2006, under which Hamdan is being tried. It banned evidence obtained using torture but said statements derived from harsh interrogations are allowable if the judge finds the evidence reliable and relevant. Congress in December 2005 banned "cruel, inhuman, or degrading treatment," but statements made under such duress before that date could be admissible. Many of Hamdan's interrogations occurred before the congressional action, according to court testimony.

Eugene R. Fidell, president of the National Institute of Military Justice, said that the rules are "really offensive" and that Hamdan should have been tried in the federal courts. The [Justice Department](#) has obtained convictions in 80 terrorism cases in those courts since Sept. 11, according to the Center on Law and Security at the New York University School of Law.

But David Rivkin, a Justice Department official in the [Ronald Reagan](#) and [George H.W. Bush](#) administrations, said evidence standards before the military cannot be the same as in a civilian trial. "The notion that you're going to obtain 'CSI'-level evidence on the battlefield is absurd," he said.

Hamdan's trial will start with questioning of the 13 prospective jurors, all military officers. At least five jurors will be seated, and a two-thirds majority is needed for conviction. The same jury would determine a sentence.

Though Hamdan, because of his enemy combatant status, may not be released even under an acquittal, prosecutors insist that Hamdan's trial is necessary. In addition to securing justice for his alleged crimes, a conviction could keep him in custody even beyond any official end to the Bush administration's anti-terrorism efforts. "The government can hold Mr. Hamdan all the way up until the end of hostilities," [John Murphy](#), a Justice Department lawyer who is on the team prosecuting Hamdan, said in court last week. "It could hold him longer if he were convicted and sentenced beyond that in a commission."

Malinowski said an acquittal would make holding Hamdan "unsustainable."

And it is uncertain whether Hamdan would remain at Guantanamo, since Bush and both major presidential candidates have expressed a desire to close the detention facility. Yet it is equally uncertain

where Hamdan, who is in his late 30s, could be sent if released. U.S. officials have expressed concerns about Yemen's ability to securely hold terrorism suspects.

If Hamdan is convicted, the verdict would automatically be reviewed by a Pentagon official and then appealed to a military appellate court. His attorneys could then appeal to the [U.S. Court of Appeals](#) in the District and the Supreme Court -- and could challenge his enemy combatant designation at each level of review, Pentagon officials said.

Prosecutors indicated they would rely on incriminating statements Hamdan allegedly made to interrogators in the two years after his capture in Afghanistan in late 2001. An [FBI agent](#) testified at a pretrial hearing that Hamdan admitted being aware of bin Laden's involvement in the Sept. 11 attacks and that he helped the al-Qaeda leader escape after Sept. 11 and after the 1998 bombings of two U.S. embassies in East Africa. Hamdan's lawyers continued to insist that he was a driver and mechanic who relied on bin Laden only for a paycheck.

But Hamdan's military lawyer, Navy Lt. Cmdr. Brian Mizer, said the trial "is going to be deficient. It's going to proceed, but . . . there are fundamental flaws in this system. I don't know that I can predict an acquittal."

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