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EDITORIAL

Guilty as Ordered

Now that was a real nail-biter. The court designed by the White House and its Congressional enablers to guarantee convictions of high-profile detainees in Guantánamo Bay, Cuba — using evidence obtained by torture and secret evidence as desired — has held its first trial. It produced ... a guilty verdict.

The military commission of six senior officers (whose names have not been made public) found Salim Ahmed Hamdan, who worked as one of Osama bin Laden's drivers until 2001, guilty of one count of providing material support for terrorism.

The rules of justice on Guantánamo are so stacked against defendants that the only surprise was that Mr. Hamdan was actually acquitted on the more serious count of conspiring (it was unclear with whom) to kill Americans during the invasion of Afghanistan after Sept. 11, 2001.

The charge on which Mr. Hamdan was convicted seemed logical since he did work as Mr. bin Laden's driver. But it was still an odd prosecution. Drivers of even the most heinous people are generally not charged with war crimes.

It is impossible, in any case, to judge the evidence against Mr. Hamdan because of the deeply flawed nature of this trial — the blueprint for which was the Military Commissions Act of 2006, one of the worst bits of lawmaking in American history.

At these trials, hearsay and secret documents are admissible. Mr. Hamdan's defense was actually required to begin its case in a secret session. The witness was a camp psychologist, presumably called to back Mr. Hamdan's account of being abused by his interrogators.

Col. Morris Davis, the former chief prosecutor in Guantánamo, put the trial in a disturbing light. He testified that he was informed by his superiors that only guilty verdicts would be tolerated. He also said that he was told to bring high-profile cases quickly to help Republicans score a pre-election public relations coup.

Colonel Davis gave up his position on Oct. 4, 2007. That, he wrote in *The Los Angeles Times* in December, was "the day I concluded that full, fair and open trials were not possible under the current system."

In his article, Colonel Davis described a highly politicized system in which people who were supposed to be neutral decision-makers were allied with the prosecutors. According to Colonel Davis, Defense Secretary Robert Gates pushed out a fair-minded "convening authority" — the official who decides which cases go to trial, which charges will be heard and who serves on the jury.

That straight-shooting administrator was replaced by Susan Crawford who, Colonel Davis said, assessed evidence before charges were filed, directed the prosecution's preparation and even drafted charges. This "intermingling" of "convening authority and prosecutor roles," Colonel Davis argued, "perpetuates the perception of a rigged

process.”

Colonel Davis said the final straw for him was when he was placed under the command of William J. Haynes, the Defense Department’s general counsel. Colonel Davis had instructed prosecutors not to offer evidence obtained through the torture technique known as waterboarding. Mr. Haynes helped draft the orders permitting acts, like waterboarding, that violate American laws and the Geneva Conventions.

We are not arguing that the United States should condone terrorism or those who support it, or that the guilty should not be punished severely. But in a democracy, trials must be governed by fair rules, and judges must be guided by the law and the evidence, not pressure from the government. The military commission system, which falls far short of these standards, is a stain on the United States.

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