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Guantanamo Judge Blocks Use of Some Statements

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'Highly Coercive' Conditions Are Cited

By Jerry Markon
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GUANTANAMO BAY, Cuba. July 21 -- Prosecutors in the trial of [Osama bin Laden](#)'s former driver cannot use as evidence some statements the defendant gave interrogators because they were obtained under "highly coercive" conditions while he was a captive in Afghanistan, a military judge ruled Monday evening.

As the first [U.S. military](#) commission since World War II got underway, Navy Capt. Keith J. Allred threw out the statements that [Salim Ahmed Hamdan](#) made after he was captured in Afghanistan in late 2001, including detailed descriptions of bin Laden's whereabouts. Some of Hamdan's allegedly incriminating admissions made up a key part of the prosecution's case against him.

But the judge declined to suppress admissions made by Hamdan after he arrived at the U.S. military prison here, ruling that the Fifth Amendment did not apply to Hamdan and that "no coercive techniques influenced" what he said. Allred ruled, however, that to use the admissions, prosecutors must produce Hamdan's interrogators to explain the conditions under which the questioning took place.

Allred's willingness to throw out evidence in a proceeding against an accused [al-Qaeda](#) member could bode badly for cases the government expects to bring against planners of the Sept. 11, 2001 attacks, some of whom were subjected to far more coercive conditions. [Khalid Sheik Mohammed](#), the self-confessed mastermind of those attacks, and other accused Sept. 11 conspirators are scheduled to be tried after Hamdan. Mohammed is one of three detainees the government has said was subjected to "waterboarding," a form of simulated drowning.

Prosecutors vowed Monday night to proceed against Hamdan, and would not address how the ruling might affect future military commission trials. Opening arguments are scheduled for Tuesday.

"We accept the ruling, and we'll go to trial in the morning," said Col. Lawrence Morris, the military commissions' chief prosecutor. "You don't always get everything you're interested in, but it does not reduce my confidence in our ability to fully depict Mr. Hamdan's criminality."

Defense lawyers could not be reached to comment.

Air Force Col. [Morris Davis](#), who resigned last year as the chief prosecutor for military commissions in part because he refused to introduce evidence obtained by coercion, said he thinks the decision could cause prosecutors significant problems. He said it sets a precedent in which many statements elicited from other detainees cannot be used.

"Hamdan's treatment across the board was as favorable as anyone we intended to prosecute," Davis said. "There were clearly others who experienced much more traumatic treatment. If the judge has a problem with Hamdan, there are probably equal or greater problems with other cases."

The ruling came hours after a six-member jury of military officers was chosen to hear the terrorism conspiracy charges against Hamdan, and is especially noteworthy because the rules of evidence are designed to give great latitude to prosecutors. Unlike in civilian trials, military commission rules allow

the use of evidence obtained from "cruel" and "inhuman" interrogation methods if the judge finds it reliable and relevant, and the statements were obtained before 2005.

That provision, along with another allowing the introduction of hearsay evidence, is a key reason that opponents have long considered the system to be weighted against the accused. The administration defends the system as necessary to secure justice in the legal fight against terrorism.

Hamdan's trial began as [Attorney General Michael B. Mukasey](#) renewed debate in Washington over how U.S. courts should handle legal claims filed by detainees. After a recent Supreme Court ruling that offered [Guantanamo Bay](#) detainees the right to challenge their detentions in civilian courts, he said, there is a "pressing need" for clarity on how federal judges should treat those petitions, which have been filed by more than 270 detainees.

He urged Congress to draft legislation that would impose a uniform set of procedures for the use of classified information in such "habeas corpus" suits, and expressed special concern about the possibility that detainees could be released inside the United States.

Hamdan, of Yemen, pleaded not guilty Monday. His lawyers have portrayed him as a low-level salaried employee of bin Laden's and have sought to have his statements to interrogators thrown out because of the conditions of his captivity.

Allred's decision contained extensive detail about what the defendant allegedly told interrogators. Hamdan said he trained at an al-Qaeda camp, identified photos of more than 20 Sept. 11 planners and provided details about bin Laden's security and associates, Allred wrote.

The judge quoted Hamdan as saying that bin Laden discussed a planned operation with him a week before the attacks on the [World Trade Center](#) and Pentagon, and also identified photos of other suspected terrorists, including Richard Reid, the "shoe bomber."

As for the interrogations in Afghanistan, Allred wrote: "The interests of justice are not served by admitting these statements because of the highly coercive environments and conditions under which they were made." The conditions, he said, included Hamdan being tied up for long periods of time, with a bag over his head. Allred did allow two videotaped interrogations from Afghanistan.

The judge accepted Hamdan's allegations that he was also "subjected to various types of coercive treatment," including conditions similar to solitary confinement, after he arrived at Guantanamo in 2002. Once, the judge wrote, Hamdan was "touched in the crotch through his clothing" by a female interrogator.

Hamdan had testified about that treatment at a pretrial hearing last week. Prosecutors denied any mistreatment, but did not put the female guard on the stand.

But Allred said that Hamdan's statements at Guantanamo were not made because of coercion, and that some of the conditions were "rationally related to good order and discipline in the camp."

Charles "Cully" Stimson, who oversaw detainee affairs for [the Pentagon](#) and now is at the [Heritage Foundation](#), said the ruling is a "watershed" opinion that will probably be repeated with other cases. "The outlook is bleak, and rightly so, for the admission of those statements," he said. "Anyone who thought they had a good chance to have those statements admitted is ignorant of the way military justice works and the way military judges operate."

Staff writers Carrie Johnson and Josh White and staff researcher Julie Tate in Washington contributed to this report.

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