



UNITED STATES COURT
OF
MILITARY COMMISSION REVIEW

Appellate Oral Argument

United States v. Salim Ahmed Hamdan

CMCR No. 09-002

Tuesday, January 26, 2010

2:00 p.m.

United States Court of Appeals for the Federal Circuit

Courtroom 201

717 Madison Place, N.W. Washington, D.C. 20439

Counsel:

Counsel for the United States, the Appellee, are:

Captain John F. Murphy, JAGC, U.S. Navy Reserve *,
Captain Edward S. White, JAGC, U.S. Navy, and
COL Francis Gilligan, (U.S. Army, Ret.).

Colonel Gilligan will argue for the United States.

Counsel for Mr. Hamdan, the Appellant, are:

Mr. Harry H. Schneider, Jr., Esq.
Mr. Joseph M. McMillan, Esq.
Mr. Charles C. Sipos, Esq.
Mr. Adam Thurschwell, Esq. and
Captain Michael G. Thieme, JA, U.S. Air Force

Mr. McMillan will argue for the Appellant.

The Court:

Three judges will hear the oral arguments and decide the legal issues.

Captain Eric E. Geiser, JAGC, U.S. Navy, **Presiding Judge**
Colonel David L. Conn, JA, U.S. Army, and
Colonel Barbara G. Brand, JA, U.S. Air Force

Case summary:

From 1996 to 2001, Salim Ahmed Hamdan, a citizen of Yemen, was allegedly involved in several actions designed to assist al Qaeda, including acting as Usama bin Laden's driver. In 2001, Mr. Hamdan was captured by Afghan soldiers and turned over to U.S. forces. He was transported to Guantánamo Bay in 2002, and in 2004 his charge of conspiracy was referred to a military commission. Mr. Hamdan brought an action in federal court challenging the authority to try him before a military commission created by Presidential Executive Order. In 2006, the U.S. Supreme Court in *Hamdan v. Rumsfeld* held that the military commission, as established, violated the Uniform Code of Military Justice and the Geneva Conventions and therefore lacked the power to proceed against him. In response to this decision, Congress passed the Military Commissions Act ("MCA") in 2006 which set out a new military commissions system and identified conspiracy and material support for terrorism as offenses triable by military commission. Tried in the first and, so far, the only completed contested trial at Guantánamo, the military commission panel members acquitted Mr. Hamdan of conspiracy and convicted him of five specifications of material support for terrorism. The United States sought a sentence of life in prison, but the military commission sentenced him to sixty-six months confinement with credit for sixty-one months already served. In 2008, Mr. Hamdan was transferred to Yemen to serve the remainder of his sentence and was released there in January 2009.

* Captain Murphy is Chief Prosecutor, Office of Military Commissions

Issues Presented:

The Court of Military Commission Review will hear arguments on the following issues:

- I. Whether the sole offense of which Appellant was convicted: material support for terrorism, under 10 U.S.C. § 950u, is a violation of the law of war?
- II. Whether Appellant's conviction violates *ex post facto* law?

Order of Proceedings^{*}:

The Court Commissioner will call the court to order.

Each party will have thirty minutes for argument.

Appellant Defense Counsel will argue first.

Appellee Government's Counsel will argue second.

The Defense may ask to reserve 10 minutes for rebuttal.

The judges may ask questions at any time during the arguments.

After arguments are complete, the court will adjourn, and will deliver its decision in due course.

Questions may be addressed to Mr. Joseph DellaVedova, Public Affairs Office, Office of Military Commissions, at: 703 428 7244.

^{*} The Court of Military Commission Review's Rules of Practice are available at:
<http://www.defenselink.mil/news/courtofmilitarycommissionreview.html>

Appellate Judge Biographies:

Captain Eric E. Geiser, JAGC. U.S. Navy - Presiding Judge

The Presiding Judge for this oral argument is Captain Eric E. Geiser. Captain Geiser is Chief Judge of the Navy-Marine Corps Court of Criminal Appeals where he has served since 2005. Prior to this assignment, he served as Deputy Assistant Judge Advocate General, Administrative Law, in the Office of the Judge Advocate General. His previous assignments have included Fleet Judge Advocate for Commander SIXTH Fleet, in Gaeta, Italy; Deputy Legal Counsel, Office of the Chairman of the Joint Chiefs of Staff; Deputy Legal Counsel, Bureau of Naval Personnel, Arlington, Virginia; Staff Judge Advocate for Commander Submarine Group SIX in Charleston, South Carolina, Staff Judge Advocate for Commander Cruiser-Destroyer Group THREE in San Diego, from where he deployed to the Persian Gulf and participated in Southern Watch operations. Prior to receiving his Juris Doctorate from Loyola University of Chicago School of Law, Captain Geiser served as First Lieutenant and Navigator on the guided missile destroyer USS TOWERS (DDG-9), in Yokosuka, Japan. Captain holds a Bachelor of Science degree from University of Wisconsin-Madison and a Master of Laws degree, with highest honors, from The George Washington School of Law.

Colonel David L. Conn, JA, U.S. Army

Colonel Conn is a Senior Judge at the U.S. Army Court of Criminal Appeals where he has served since 2008. Prior to this assignment he served in various assignments as an Army Judge Advocate, including Trial Counsel and Brigade Legal Advisor, Frankfurt, Germany; Associate Professor of Constitutional Law at the U.S. Military Academy; Senior Defense Counsel at Fort Riley, Kansas; Chief, Administrative and Civil Law, Fort Stewart, Georgia; Army Civil Litigation Attorney in Arlington, Virginia; European Regional Defense Counsel; Trial Judge and Chief Circuit Judge, 1st Circuit, Fort Drum, New York. Colonel Conn is a native of Pennsylvania and graduate of Washington & Jefferson College where he received his Bachelor of Arts Degree. He is received his Juris Doctorate degree from the College of William and Mary, and his Master of Laws degree from the Army's Judge Advocate General's School in Charlottesville.

Colonel Barbara G. Brand, JA, U.S. Air Force

Colonel Barbara G. Brand is the Chief Judge, United States Air Force Court of Criminal Appeals. Other assignments include: Appellate Military Judge, Air Force Court of Criminal Appeals, Bolling Air Force Base, Washington; Military Trial Judge, Central Circuit/Region, Randolph Air Force Base, Texas; Staff Judge Advocate, 694th Intelligence Group, Fort George G. Meade, Maryland; Deputy Staff Judge Advocate, 88th Air Base Wing, Wright-Patterson Air Force Base, Ohio; Staff Judge Advocate, 81 Training Wing, Keesler Air Force Base, Mississippi; Assistant Chief Trial Judge, Bolling Air Force Base; Assistant Staff Judge Advocate, General Law, Headquarters Air Force Materiel Command, Wright-Patterson Air Force Base, Ohio; Circuit Trial Counsel, 1st Circuit, Bolling Air Force Base; Area Defense Counsel, RAF Greenham Common, United Kingdom; Area Defense Counsel, MacDill Air Force Base, Florida; and Assistant Staff Judge Advocate, Chief of Military Justice, 56th Combat Support Group, MacDill Air Force Base. Colonel Brand obtained her undergraduate degree from Western Kentucky University in 1976. She received her Juris Doctorate from the University of Louisville Law School.