

The following text may be printed, copy/pasted, or downloaded and emailed.

The Rule of Law at Gitmo

EDITORIAL

New York Times

November 10, 2004

A prosecution before the first American military commission since World War II was halted this week, just as it was getting started, by a federal judge in Washington who ruled that the proceedings lacked the basic elements of a fair trial and violated the Geneva Conventions. It was the latest in a series of court decisions that have taken the Bush administration to task for trampling on the law in the name of fighting terrorists. The administration should bring its policies into compliance with the law.

Salim Ahmed Hamdan, a former driver for Osama bin Laden who was taken captive in Afghanistan, was to be tried as a war criminal before the newly created military commission at Guantánamo. Under the legal regime set up by the Bush administration, these tribunals lack the procedural safeguards of a court-martial. Mr. Hamdan would have very little right to see the evidence presented against him, a situation that puts a defendant at a severe disadvantage.

In his ruling, Judge James Robertson of Federal District Court in Washington held that Mr. Hamdan cannot be tried in this kind of a stripped-down proceeding. The Geneva Conventions, which the United States has signed, requires a court martial for any detainee who is a prisoner of war, or whose status is in doubt. At a court martial, defendants have a far greater ability to see, and challenge, the prosecution's evidence.

The administration argues that Mr. Hamdan is not entitled to be treated as a P.O.W. because he worked for Al Qaeda, not a traditional army, and that the president's declaration to that effect was enough to deny him the protection of the Geneva Conventions. Judge Robertson, however, disagreed. Article 5 of the Third Geneva Convention says prisoners can be denied P.O.W. status only by a competent tribunal. Judge Robertson said the administration did not give Mr. Hamdan the sort of proceeding that would be necessary to deny him his rights.

The Bush administration has a history of flouting the law, and the treaties to which the United States is a signatory, as part of the so-called war on terror. It argued, until the Supreme Court ruled otherwise in June, that the detainees in Gitmo had no right to challenge their confinement, and even tried to apply "unlawful combatant" status to American citizens at the president's discretion. Earlier this year, a now-infamous Justice Department memo came to light that set out a road map for avoiding legal prohibitions on the use of torture.

It is too early to tell whether a post-John Ashcroft Justice Department will view these issues differently. For now, the administration says it will appeal this week's ruling, which could set the stage for another Supreme Court ruling that it has gone too far. Meanwhile, America's image abroad will take another beating, and our soldiers will be in even greater danger in the future of being denied Geneva Convention protections should they be captured. The administration should drop the appeal and concentrate instead on upgrading its flawed policies.