

Friday, August 8, 2008

**Hamdan's lawyers, judge and jury as models for their counterparts.**

Â Bill of Rights.Â (From the public domain.)Â Â Salim Ahmed Hamdan has had an eventful ride through various tribunals. He won a criticalÂ Supreme Court challenge of the military commission system in 2006. He went to trial recently at the United States' military base in Guantanamo, Cuba, on terrorism charges.Â An all-military member jury acquitted him of terrorism conspiracy, and convicted him of the less serious charge of material support for terrorism.Â Although Mr. Hamdan could still have been sentenced to up to life in prison, the jury decided on a sentence of five and one-half years incarceration, which has already been heavily eaten up by the sixty-one months credit for the time he has been detained to date. Â Not only is the sentence stunning, but so is the New York Times report of the very amiable connection forged between Mr. Hamdan and his military trial judge: "During pretrial proceedings, Mr. Hamdan, a father of two daughters in Yemen, and the judge, a career Navy lawyer, had regularly exchanged smiles and, on occasion, chats. Before he left the bench, Judge Allred said a few parting words to the man he had gotten to know in a most unusual way. 'Mr. Hamdan,' Judge Allred said, 'I hope the day comes that you are able to return to your wife and daughters and your country.' 'Inshallah,' Mr. Hamdan said in Arabic, before an interpreter gave the English translation of 'God willing.' 'Inshallah,' Judge Allred responded."Â Why did the trial judge "hope" Mr. Hamdan would be reunited with his family in Yemen? Aside from any hassles that Yemen's government might give Mr. Hamdan if he returns, there is no telling whether the Bush Administration will try to manufacture a reason to keep Mr. Hamdan detained beyond his 5 1/2 year sentence. Â Did Mr. Hamdan obtain such a relatively positive trial result because of fair written procedures for such trials, or despite such procedures? I expect the answer is the latter. I understand that his trial involved fewer protections than criminal defendants receive in civilian criminal courts in the United States. Aside from the prosecutors' problems trying to turn Mr. Hamdan into much more than a driver and bodyguard for Osama bin Laden, he appears to have had a very talented, dedicated, and caring defense team. which includes lawyers from the corporate law firm of Perkins Coie -- which defended Mr. Hamdan at the government's invitationÂ -- and Hamdan's lawyer Charles D. Swift, who started with Mr. Hamdan when a military lawyer, was booted out of the military after winning for Hamdan in the Supreme Court, and now is an Emory law professor. Â Mr. Hamdan also had a courageous jury and judge. Whether or not the jury was wise to convict at all, tens if not hundreds of millions of worldwide eyes were on this judge and jury, and they seemed to act independently of that, and independently of any fears of being sanctioned by their superiors one way or another, just as was Charles Swift for so successfully defending Mr. Hamdan. Â May Mr. Hamdan's defense team, judge and jury be a beacon and inspiration to their counterparts in all other tribunals to do the right thing in criminal cases, no matter the personal, professional, or financial cost.Â Jon Katz.

Posted by Jon Katz in Criminal Defense at 00:00