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## Tribunals go to high court

*Legality of terror trials at issue*

**Charles Lane**  
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WASHINGTON - The Supreme Court on Monday agreed to rule on the legality of the Bush administration's planned military commissions for terror suspects, setting up what could be one of the most significant rulings on presidential war powers since the end of World War II.

President Bush has claimed broad power to conduct the war against al-Qaida and said questions about the detention of terror suspects, their interrogation, trial and punishment are matters for him to decide as commander in chief.

But the court's announcement that it would hear the case of Osama bin Laden's former driver, Salim Ahmed Hamdan, shows that the justices feel the judicial branch has a role to play as well.

The court has focused on whether Bush has the power to set up the commissions and whether detainees facing military trials can go to court in the United States to secure the protections guaranteed by the Geneva Conventions.

The justices have chosen to intervene at a sensitive time for the Bush administration.

The Senate is mounting its first sustained challenge to the administration's claim that it alone can determine what interrogation methods are proper for terror detainees.

The United States has come under fire after disclosures that the CIA has been interrogating suspects at secret "black sites" in Eastern Europe.

### Foreign policy views 'lap over'

All that will be in the background as the court considers a case that will turn on its view of whether the other branches of government can and should permit the executive branch to make all the rules in the battle against al-Qaida.

"The discomfort some justices may have with U.S. foreign policy is bound to lap over (into their views of the legal issues)," said Michael Glennon, a professor of international law at the Fletcher School of Law and Diplomacy at Tufts University.

"There is no question the justices live in this world and they read the newspapers."

### Sept. 11 led to terror tribunals

Both issues, military commissions and the Geneva Conventions, are intertwined and go back to the earliest days after the terrorist attacks of Sept. 11, 2001.

On Nov. 13, 2001, Bush issued a "military order" declaring panels of military officers would try suspects for violations of the laws of war.

The administration argued military trials are necessary because the regular processes of civilian justice cannot deal with a shadowy foe such as al-Qaida.

It says the president has the power to establish commissions under his constitutional authority as commander in chief, the Sept. 18, 2001, congressional resolution that authorized the use of force against al-Qaida and other statutes.

Under regulations developed by the Pentagon in response to early criticisms of the commissions, defendants before military commissions would enjoy a presumption of innocence, access to an attorney and other protections.

## **Suspects denied protection**

Also early on in the war, the White House decided, over the strong objections of the State Department, that suspected al-Qaida terrorists captured in Afghanistan and elsewhere should not be entitled to the protections of the Geneva Conventions.

They are not prisoners of war but "unlawful combatants" for whom the conventions offer no legal benefits, the administration says.

As a result, they can be tried before military commissions, rather than courts-martial, which offer more procedural protections.

## **Hamdan has rights, lawyers say**

Hamdan's attorneys argue that Congress authorized the president only to detain enemy combatants, not to try them.

Any commissions would have to be established with Congress' express approval, or else they could be changed and manipulated by the president alone, they argue.

In their brief to the court, Hamdan's lawyers argue that the Geneva Conventions entitle their client to an impartial hearing to determine whether he qualifies as a POW, and to a court-martial, unless he is found to be an unlawful combatant.

## **Roberts ruled against Hamdan**

Hamdan's tribunal began in August 2004 but was halted by U.S. District Judge James Robertson in Washington.

A three-judge panel of the U.S. Court of Appeals for the District of Columbia Circuit, including now-Chief Justice John Roberts, overturned Robertson in July.

The government says Hamdan, one of about 500 terror suspects imprisoned at Guantanamo, was a confidant and bodyguard of bin Laden's from 1996 to 2001 and helped transfer weapons from Taliban stockpiles to al-Qaida.

Hamdan says he was a mere chauffeur.

He says that he has cooperated with American interrogators but that they have mistreated him and held him in solitary confinement since December 2003.

## 5 others face charges

Also Monday, Defense Department officials announced that charges have been approved for five more "enemy combatants" held at Guantanamo and that they could face military commissions soon.

The department said charges will go forward against Ghassan Abdullah al-Sharbi and Jabran Said bin al-Qahtani of Saudi Arabia; Sufyian Barhoumi of Algeria; Binyam Ahmed Mohammed of Ethiopia; and Omar Ahmed Khadr of Canada.

Four are charged with conspiracy to attack civilians, attack objects, murder, destroy property and terrorism.

Khadr is charged with conspiracy to murder and attempted murder and with "aiding the enemy," according to a military statement.

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