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Thursday, June 29, 2006

Decisions: Hamdan decided, military commissions invalid

Posted by Lyle Denniston at 10:03 AM

The Supreme Court ruled on Thursday that Congress did not take away the Court's authority to rule on the military commissions' validity, and then went ahead to rule that President Bush did not have authority to set up the tribunals at Guantanamo Bay, Cuba, and found the commissions illegal under both military justice law and the Geneva Convention. In addition, the Court concluded that the commissions were not authorized when Congress enacted the post-9/11 resolution authorizing a response to the terrorist attacks, and were not authorized by last year's Detainee Treatment Act. The vote against the commissions and on the Court's jurisdiction was 5-3, with the Chief Justice not taking part.

The Court expressly declared that it was not questioning the government's power to hold Salim Ahmed Hamdan "for the duration of active hostilities" to prevent harm to innocent civilians. But, it said, "in undertaking to try Hamdan and subject him to criminal punishment, the Executive is bound to comply with the Rule of Law that prevails in this jurisdiction."

Four Justices concluded that Salim Ahmed Hamdan could not be charged with conspiracy before a military commission, but that did not have majority support, so its binding effect is uncertain.

The quotation just recited was from the main opinion, written by Justice John Paul Stevens. That opinion was supported in full by Justices Stephen G. Breyer, Ruth Bader Ginsburg and David H. Souter. Justice Anthony M. Kennedy wrote separately, in an opinion partly joined by Justices Breyer, Ginsburg and Souter. Kennedy's opinion did not support all of Stevens' discussion of the Geneva Convention, but he did find that the commissions were not authorized by military law or that Convention. Kennedy expressed no view, for example, on whether Hamdan could be charged with conspiracy or whether the accused has a right under the Convention to be present in all commission proceedings.

Justice Breyer, joined by Ginsburg, Kennedy and Souter, wrote separately to answer the dissenters' complaint that the ruling would hamper the President's ability to deal with a new and deadly enemy. The Court's conclusion, Breyer said, "ultimately rests upon a single ground: Congress has not issued the Executive a 'blank check.'...Indeed, Congress has denied the President the legislative authority to create military commissions of the kind at issue here. Nothing prevents the President from returning to Congress to seek the

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authority he believes necessary." The Breyer opinion amounted to a mini-lecture on the virtue of presidential consultation with Congress, at least "where, as here, no emergency prevents" such consultation. "The Constitution places its faith in those democratic means. Our Court today simply does the same."

Justices Samuel A. Alito, Jr., Antonin Scalia and Clarence Thomas, the dissenters, each wrote an opinion.

Stevens recited from his opinion at length, followed by Scalia and Thomas. The recitations continued for 32 minutes, and the Court recessed for the summer at 10:42 a.m.

The jurisdictional part of the decision interpreted the Detainee Treatment Act, passed by Congress late last year to curtail court authority to rule on Guantanamo cases. The Court interpreted that law as not applying to cases already pending. That would appear to preserve the jurisdiction of the lower federal courts to proceed to decide other detainee challenges to their prolonged detention, just as the Supreme Court could proceed to decide the validity of the commissions to try those detainees who have been charged with war crimes. Ten such individuals have been charged. Hundreds of others not charged with any crime have pending challenges to their detention.

The Chief Justice was out of the Supreme Court case because he had sat on the D.C. Circuit Court when it issued the decision that the Court overturned Thursday. On the Circuit Court, he supported the legality of the commissions. That decision was reversed Thursday.

The Court, in the only other decision, ruled that Arizona's law on the insanity defense does not violate constitutional due process. The ruling in *Clark v. Arizona* (05-5966) was written by Justice David H. Souter and divided the Court 6-3, although Justice Breyer also filed a partial dissent and partial concurrence. The ruling upheld what is called the "Mott rule" in Arizona, barring psychiatric evidence of a mental disorder short of insanity to offset prosecution evidence of criminal intent. The ruling also upheld Arizona's definition of the insanity defense.

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Comments

In the arizona case the court divided 5-4, as I read it. Beyer likes the logic but wants the case remanded for further proceedings.

SOUTER, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, THOMAS, and ALITO, JJ., joined, and in which BREYER, J., joined except as to Parts III-B and III-C and the ultimate disposition. BREYER, J., filed an opinion concurring in part and dissenting in part. KENNEDY, J., filed a dissenting opinion, in which STEVENS and GINSBURG, JJ., joined.

Posted by: Daniel  at June 29, 2006 11:41 AM

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