

WASHINGTON

Supreme Court Blocks Guantánamo Tribunals

By LINDA GREENHOUSE JUNE 29, 2006

WASHINGTON, June 29 — The Supreme Court on Thursday repudiated the Bush administration's plan to put Guantánamo detainees on trial before military commissions, ruling broadly that the commissions were unauthorized by federal statute and violated international law.

"The executive is bound to comply with the Rule of Law that prevails in this jurisdiction," Justice John Paul Stevens, writing for the 5-to-3 majority, said at the end of a 73-page opinion that in sober tones shredded each of the administration's arguments, including the assertion that Congress had stripped the court of jurisdiction to decide the case. A principal but by no means the only flaw the court found in the commissions was that the president had established them without Congressional authorization.

The decision was such a sweeping and categorical defeat for the Bush administration that it left human rights lawyers who have pressed this and other cases on behalf of Guantanamo detainees almost speechless with surprise and delight, using words like "fantastic," "amazing," "remarkable." Michael Ratner, president of the Center for Constitutional Rights, a public interest law firm in New York that represents hundreds of detainees, said, "It doesn't get any better."

President Bush said he planned to work with Congress to "find a way forward," and there were signs of bipartisan interest on Capitol Hill in crafting legislation that would authorize new, revamped commissions intended to withstand judicial scrutiny.

The courtroom was, surprisingly, not full, but among those in attendance, there was no doubt that they were witnessing a historic event, a definitional moment in the ever-shifting balance of power among the branches of government that ranked with the court's order to President Nixon in 1974 to turn over the Watergate tapes or with the court's rejection of President Truman's seizure of the nation's steel mills, a 1952 landmark decision from which Justice Kennedy quoted at length.

Senator Arlen Specter, the Pennsylvania Republican who is chairman of the Judiciary Committee, introduced a bill immediately and said his committee would hold a hearing on July 11, as soon as Congress returns from the July 4 recess. Mr. Specter said the administration had resisted his effort to propose similar legislation as early as 2002.

Two Republican senators, Lindsey Graham of South Carolina and Jon Kyl of Arizona, said in a joint statement that they were "disappointed" but that "we believe the problems cited by the court can and should be fixed." They added, "Working together, Congress and the administration can draft a fair, suitable, and constitutionally permissible tribunal statute." Both overseas and in the United States, critics of the administration's detention policies praised the decision and urged President Bush to take it as an occasion to shut down the Guantanamo prison camp. "The ruling destroys one of the key pillars of the Guantanamo system," said Gerald Staberock, a director of the International Commission of Jurists in Geneva. He added: "Guantanamo was built on the idea that prisoners there have limited rights. There is no longer that legal black hole."

The majority opinion by Justice Stevens and a concurring opinion by Justice Anthony M. Kennedy, who also signed most of Justice Stevens's opinion, indicated that finding a legislative solution would not necessarily be easy. In an important part of the ruling, the court held that a provision of the Geneva Conventions known as Common Article 3 applies to the Guantanamo detainees and is enforceable in federal court for their protection.

This provision requires humane treatment of captured combatants and prohibits trials except by "a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized people."

The opinion made it clear that while this provision does not necessarily require the full range of protections of a civilian court or a military court martial, it does require observance of protections for defendants that are missing from the rules the administration has issued for military commissions. The flaws the court cited were the failure to guarantee the defendant the right to attend the trial and the prosecution's ability under the rules to introduce hearsay evidence, unsworn testimony, and evidence obtained through coercion.

Justice Stevens said that the historical origin of military commissions was in their use re as a "tribunal of necessity" under wartime conditions. "Exigency lent the commission its legitimacy," he said, "but did not further justify the wholesale jettisoning of procedural protections."

The majority opinion was also joined by Justices David H. Souter, Ruth Bader Ginsburg, and Stephen G. Breyer, who wrote a brief concurring opinion of his own that focused on the role of Congress. "The court's conclusion ultimately rests upon a single ground: Congress has not issued the executive a blank check," he said.

The dissenters were Justices Clarence Thomas, Antonin Scalia, and Samuel A. Alito Jr. Each wrote a dissenting opinion. Justice Scalia focused on the jurisdictional issue, arguing that Congress had stripped the court of jurisdiction to proceed with this case, *Hamdan v. Rumsfeld*, No. 05-184, when it passed the Detainee Treatment Act last December and provided that "no court, justice, or judge" had jurisdiction to hear habeas corpus petitions filed by detainees at Guantanamo Bay. The question was whether that withdrawal of jurisdiction applied to pending cases. The majority held that it did not.

Justice Thomas's dissenting opinion addressed the substance of the court's legal conclusions. In a portion of his opinion that Justices Scalia and Alito also signed, he called the decision "untenable" and "dangerous." He observed that "those justices who today disregard the commander-in-chief's wartime decisions" had last week been willing to defer to the judgment of the Army Corps of Engineers in a Clean Water Act case. "It goes without saying that there is much more at stake here than storm drains," he said.

Chief Justice John G. Roberts Jr. did not take part in the case. Last July, four days before President Bush nominated him to the Supreme Court, he was

one of the members of a three-judge panel of the federal appeals court here that ruled for the administration in this case.

In the courtroom on Thursday morning, the chief justice sat silently in his center chair as Justice Stevens, sitting to his immediate right as the senior associate justice, read from the majority opinion. It made for a striking tableau on the final day of the first term of the Roberts court: the young chief justice, observing his work of just a year earlier taken apart point by point by the tenacious 86-year-old Justice Stevens, winner of a Bronze Star for his service as a Navy officer during World War II.

The decision came in an appeal brought on behalf of Salim Ahmed Hamdan, a Yemeni who was captured in Afghanistan in November 2001 and brought to Guantanamo in June 2002. According to the government, he was a driver and bodyguard for Osama Bin Laden. In July 2003, he and five others were to be the first to face trial by military commission. But it was not until the next year that he was formally charged with a crime, conspiracy.

The commission proceeding began but was interrupted when the federal district court here ruled in November 2004 that the commission was invalid. This was the ruling that the federal appeals court, with the participation of then-Judge Roberts, overturned last July.

Lt. Cmdr. Charles Swift, Mr. Hamdan's Navy lawyer, told the Associated Press that he had informed his client about the ruling by telephone. "I think he was awe-struck that the court would rule for him, and give a little man like him an equal chance," Commander Swift said. "Where he's from, that is not true."

The decision contained unwelcome implications, from the administration's point of view, for other legal battles, some with equal or greater importance than the fate of the military commissions themselves.

For example, in finding that the federal courts still have jurisdiction to hear cases filed before this year by detainees at Guantanamo Bay, the justices put back on track for decision a dozen cases in the lower courts here that challenge basic rules and procedures governing life for the hundreds of people confined at the United States naval base there.

In ruling that the congressional "authorization for the use of military force," passed in the days immediately following the Sept. 11, 2001 terrorist attacks, cannot be interpreted to legitimize the military commissions, the ruling poses a direct challenge to the administration's legal justification for its secret wiretapping program.

Representative Adam Schiff, a California Democrat who has also introduced a bill with procedures for trying the Guantanamo detainees, said the court's refusal to give an open-ended ruling to the force resolution meant that the resolution could not be viewed as authorizing the National Security Agency's domestic wiretapping.

Perhaps most significantly, in ruling that Common Article 3 of the Geneva Conventions applies to the Guantanamo detainees, the court rejected the administration's view that the article does not cover followers of Al Qaeda. The decision potentially opened the door to challenges, by those held by the United States anywhere in the world, to treatment that could be regarded under the provision as inhumane.

Justice Stevens said that because the charge against Mr. Hamdan, conspiracy, was not a violation of the law of war, it could not be the basis for a trial before a military commission. Justice Kennedy did not join this section of the opinion, leaving it with only four votes, because he said it was unnecessary given the general finding that the commissions were invalid.