



## Case # 3: *Hamdan v. Rumsfeld* (2006) Supreme Court Decision

**Directions:** Review the excerpts of the Supreme Court opinion(s) and then compare each Justice's reasoning with your own.

### Background

In a 5-3 decision authored by Justice John Paul Stevens, the Supreme Court held the military commission system an unconstitutional violation of U.S. military law and the Geneva Conventions. Because neither an act of Congress nor the inherent powers of the executive authorized the sort of military commission that had heard Hamdan's case, the commission failed to comply with ordinary laws of the United States and the laws of war. The laws of war include the Geneva Conventions and the UCMJ, both of which were violated by Hamdan's exclusion from parts of his own trial. Detainees had the right to appeal their detentions in federal court.

### Justice Stevens's Opinion

"For the reasons that follow, we conclude that the military commission convened to try Hamdan lacks power to proceed because its structure and procedures violate both the UCMJ and the Geneva Conventions. Four of us also conclude that the offense with which Hamdan has been charged is not an 'offens[e] that by ... the law of war may be tried by military commissions.'

"Exigency [urgent need] alone, of course, will not justify the establishment and use of penal tribunals not contemplated by Article I, Section 8 and Article III, Section 1 of the Constitution unless some other part of that document authorizes a response to the felt need...

"The Government would have us ... find in either the Authorization for Use of Military Force (AUMF) or

the Detainee Treatment Act of 2005 (DTA) specific, overriding authorization for the very commission that has been convened to try Hamdan. Neither of these congressional Acts, however, expands the President's authority to convene military commissions...

"The charge against Hamdan alleges a conspiracy extending over a number of years, from 1996 to November 2001...None of the [other] overt acts that Hamdan is alleged to have committed violates the law of war...

"There is no suggestion that Congress has, in exercise of its constitutional authority to 'define and punish Offences against the Law of Nations,' positively identified 'conspiracy' as a war crime...Because the charge does not support the commission's jurisdiction, the commission lacks authority to try Hamdan...

"Chief among [Hamdan's] particular objections [to the trial procedures] are that he may, under the Commission Order, be convicted based on evidence he has not seen or heard, and that any evidence admitted against him need not comply with the admissibility or relevance rules typically applicable in criminal trials and court-martial proceedings...

"The absence of any showing [by the executive branch that a court martial would be impracticable] is particularly disturbing when considered in light of the clear and admitted failure to apply one of the most fundamental protections afforded not just by the Manual for Courts-Martial but also by the UCMJ itself: the right to be present... the jettisoning

## Handout J: Page 2

of so basic a right cannot lightly be excused as ‘practicable.’

“Under the circumstances, then, the rules applicable in courts-martial must apply...

“[P]rocedures governing the tribunal [must] afford ‘all the judicial guarantees which are recognized as indispensable by civilized peoples.’ ...Among the rights set forth in [Geneva Convention] Article 75 is the ‘right to be tried in [one’s] presence...’

“That the Government has a compelling interest in denying Hamdan access to certain sensitive information is not doubted. But, at least absent express statutory provision to the contrary, information used to convict a person of a crime must be disclosed to him...

“We have assumed, as we must, that the allegations made in the Government’s charge against Hamdan are true. We have assumed, moreover, the truth of the message implicit in that charge—that Hamdan is a dangerous individual whose beliefs, if acted upon, would cause great harm and even death to innocent civilians...But 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.”

### **Justice Scalia’s Dissent (joined by Justices Thomas and Alito)**

Chief Justice John Roberts, who had participated in the case while serving on the DC Circuit Court of Appeals, did not take part in the decision.

“On December 30, 2005, Congress enacted the Detainee Treatment Act (DTA). It unambiguously provides that, as of that date, ‘no court, justice, or judge’ shall have jurisdiction to consider the habeas application of a Guantanamo Bay detainee. Notwithstanding this plain directive, the Court today concludes that, on what it calls the statute’s most natural reading, every ‘court, justice, or judge’ before

whom such a habeas application was pending on December 30 has jurisdiction to hear, consider, and render judgment on it. This conclusion is patently erroneous. And even if it were not, the jurisdiction supposedly retained should, in an exercise of sound equitable discretion, not be exercised...

“Here, apparently for the first time in history... a District Court enjoined [prohibited] ongoing military commission proceedings, which had been deemed ‘necessary’ by the President ‘[t]o protect the United States and its citizens, and for the effective conduct of military operations and prevention of terrorist attacks.’ Such an order brings the Judicial Branch into direct conflict with the Executive in an area where the Executive’s competence is maximal and ours is virtually nonexistent. We should exercise our equitable discretion to avoid such conflict. Instead, the Court rushes headlong to meet it...”

### **Follow-up**

The Bush administration requested, and Congress enacted the Military Commissions Act (MCA) of 2006, thus overruling the Supreme Court’s Hamdan decision. Hamdan was then tried again under this new law. In his 2008 trial, he was convicted of material support for terrorism, but acquitted of conspiracy. The military jury sentenced him to 66 months in prison. The military judge gave him credit for the 61 months he had already served in Guantanamo, during which he alleged that he had been held in isolation, and had been punched, kicked, and threatened during interrogation sessions. In November 2008, the U.S. military released him to serve the last month of his sentence in Yemen, where he rejoined his family after his release. In 2012, the D.C. Circuit Court of Appeals overturned the Hamdan conviction, explaining that “material support for terrorism” was not a crime at the time of the events for which he was prosecuted under the 2006 Military Commissions Act.