

Statement of Senator Richard J. Durbin
Hamdan v. Rumsfeld
June 29, 2006

Mr. President, we are a nation at war. There is no doubt that America must devote all of its energy and resources to defeating terrorism and stopping those who attacked us on 9/11 and would attack us again.

But we are also a nation of law. No one from the highest ranks in America to the lowest is above the law -- even during a war. That is what makes America special and in many ways different from other nations.

Today, across the street from where we meet in the Senate, the United States Supreme Court handed down a decision reminding the Bush administration that no President is above the law. The Court rejected the Bush administration's decision to turn its back on treaties and laws that have served America so well for generations. The Supreme Court held that the Bush administration must comply with the Uniform Code of Military Justice and the Geneva Conventions in its treatment of suspected terrorists.

Why did this matter come before the Supreme Court? Because, with no input from Congress, the Bush administration set aside our treaty obligations and agreements and created new rules for detaining, interrogating, and trying detainees. They claimed that the Congress had no voice in the matter and the courts had no right to review what this President decided.

The administration claimed that it could act as legislator, executive, and judge when it came to the treatment of these prisoners. But today the Constitution prevailed. The Supreme Court made it clear that it is Congress's responsibility to make the laws and the President's responsibility to follow the laws, just as the Constitution provided. Our Founding Fathers understood that it is a human and a natural political reaction for Kings and Presidents and those in power to try to be more powerful. They warned us.

In writing our Constitution over 200 years ago, they warned us that we needed to separate power in America so no one branch of Government would become too powerful. In the Federalist Papers, James Madison, our fourth President and the primary author of our Constitution, wrote: "The accumulation of all powers, legislative, executive, and judiciary, in the same hands may justly be pronounced the very definition of tyranny."

You do not hear the word “tyranny” much anymore. It meant a lot to the men and women who waged the wars and risked their lives in the great revolution creating this Government.

But the decision of the Supreme Court today is entirely consistent with that goal in our Constitution, to make certain that no President, no branch of our Government, becomes so powerful that it isn't held to check by our Constitution and our laws.

Today, the Supreme Court ruled against the Bush administration and for James Madison and for the rule of law. Here is what Justice Anthony Kennedy said: “Concentration of power (in the executive branch) puts personal liberty in peril of arbitrary action by officials, an incursion the Constitution's three-part system is designed to avoid.”

This is a historic decision -- a decision that reminds this President and every President to come that they must answer first to the Constitution of the United States. It says to President Bush and all of those who promulgated these policies that they must answer to our Constitution.

The Supreme Court has taken the same position that former Secretary of State Colin Powell took almost 5 years ago when the President and his administration first decided to set aside the standards and values of the Geneva Conventions. The Geneva Conventions, of course, were agreements entered into by civilized nations which said we should guide our conduct by common principles. The Geneva Conventions applied until this administration after 9/11 felt we could no longer hold to those standards. They were reminded today by the U.S. Supreme Court that they were wrong.

Secretary of State Colin Powell suggested we could live up to the Geneva Conventions and still fight terrorism and still make America safe. He pointed out that the Geneva Conventions do not limit the ability to hold detainees and do not give POW status to terrorists. That was a straw man created by this administration to avoid generations of legal precedents.

Secretary Powell also said that setting aside the Geneva Conventions “will reverse over a century of U.S. policy and practice...and undermine the protections of the law of war for our own troops...It will undermine public support among critical allies, making military cooperation more difficult to sustain.”

These are the words of Colin Powell, a man who dedicated his life to our military, to our country, and to public service.

When you look at the negative publicity about Guantanamo and Abu Ghraib today, you understand that Colin Powell's remarks were prophetic. He was right. Ignoring the law of war hurts our efforts to fight terrorism, and sadly it puts our troops at risk. And it is not the American way.

Unfortunately, the President did not follow Secretary Colin Powell's counsel when it came to this decision. He listened to others within his administration. That led to this confrontation before the Supreme Court. That led to this decision today.

I hope this decision will set a standard for us when it comes to dealing with this war on terrorism -- that we can win this war without losing our souls. The Supreme Court reminded us today that America -- this great and strong Nation -- can be a safe nation without compromising the values that make us different.

I urge the President to use today's decision to move on a bipartisan basis to establish a standard consistent with our values, consistent with our laws, and consistent with the treaties that we have signed for the treatment of prisoners.

Anyone who is dangerous to America should be held and should not be released. Anyone who has real value to America, in terms of intelligence, should be interrogated properly to find out what they know and how it could help protect us. But the Supreme Court makes it clear today that we have to move beyond where we are holding hundreds of prisoners at Guantanamo and other places without charges and without any clear disposition under the law.

Several of my friends have volunteered to be attorneys for those who are detained at Guantanamo. I have met with my friends in Chicago. They are men who have spent a lifetime in the practice of law, one a former U.S. Attorney for the Northern District of Illinois, another a defense counsel for many decades in the city of Chicago.

They went down to Guantanamo to meet with the detainees that they volunteered to represent and came back to Chicago begging me for a meeting. We got together and they told me the stories. First, they couldn't understand how this could happen, how the United States of America would not be following basic standards of conduct, which everyone assumed we would follow when it came to legal procedure. They asked me how this could happen. I couldn't answer it, but I knew the Supreme Court would have to answer it.

When Chief Justice Roberts, who recused himself from today's decision, and Justice Alito

came before the Judiciary Committee, we reminded them that Sandra Day O'Connor, in an earlier decision concerning the treatment of prisoners, made it clear that even during time of war no President is above the law. In the Hamdi decision, she said, "A state of war is not a blank check for the President." We asked each of these nominees if they agreed, and they said they did, without any equivocation.

The decision today by the Supreme Court, this majority decision, is a reminder of the greatness of this Nation. It is a reminder that following the rule of law we can keep America safe. We can treat these prisoners properly and legally. If they are a danger, we can hold them. But there comes a time when this President and every President must be held accountable to our Constitution.

I yield the floor. I suggest the absence of a quorum.