

The United States of America, in a brief filed in the Al Odah case, said:

Perhaps most disturbing, the habeas litigation has imperiled crucial military operations during a time of war. In some cases, habeas counsel have violated protective orders and jeopardized the security of the base by giving detainees information likely to cause unrest. Moreover, habeas counsel have frustrated interrogation critical to preventing further terrorist attacks on the United States.

This seems to have been validated—these criticisms—by the U.S. in briefs filed in Federal court by a lawyer who has filed those lawsuits on behalf of enemy combatants held at Guantanamo Bay. He boasted about disrupting U.S. war efforts in a magazine, where he said:

The litigation is brutal for [the United States.] It's huge. We have over 100 lawyers now from big and small firms working to represent detainees. Every time an attorney goes down there, it makes it that much harder [for the United States military] to do what they're doing. You can't run an interrogation . . . with attorneys. What are they going to do now that we're getting court orders to get more lawyers down there?

I know time is precious and I want to yield back to the chairman of the Armed Services Committee, but I believe those who argue for an extension of full habeas corpus rights, such as would be provided to an American citizen in civilian courts, are making a fundamental mistake by confusing two different realms of constitutional law. One would apply to an American citizen accused of a crime, where certainly the desire and the order of business is to protect that individual against unjust charges, and to make sure that the full panoply of the Bill of Rights applies to that individual. Different considerations apply when you are talking about a declared enemy of the U.S., and particularly an unlawful combatant, someone who doesn't wear the uniform, someone who doesn't respect the law of wars, and who targets innocent civilians in the pursuit of their ideology.

I don't think we should make that mistake. So I reluctantly oppose the amendment.

I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. WARNER. Mr. President, I address the Senate on this issue and pose a question to my distinguished colleague, the senior Senator from Pennsylvania. I will put into the RECORD, following the conclusion of my remarks and my colloquy with the Senator from Pennsylvania, additional material.

Before I yield the floor, it is my desire to conclude the time on our side with the Senator from Missouri, and then reserve the remainder of my time for tomorrow. It would be my hope that the Senator from Pennsylvania, likewise, would save such remarks he may wish to make for tomorrow. As he knows, there is a function going on now, which I think most of us are trying to attend.

With that, I yield the floor.

Mr. SPECTER. Mr. President, that is satisfactory to me. How much time do I have remaining?

The PRESIDING OFFICER. The Senator has 33 minutes remaining.

Mr. SPECTER. I thank the Chair.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

Mr. BOND. Mr. President, the amendment to give unlawful combatant habeas corpus rights to mirror U.S. domestic procedures is unnecessary and inappropriate.

The amendment is unnecessary because the U.S. is already giving enemy unlawful combatants more rights to question their continued incarceration than they are entitled to under international law.

Under Geneva Conventions Article 5, combatants captured during wartime are due a hearing to determine their lawful status only if such status is in doubt.

The United States goes beyond this requirement to give every combatant a status hearing, even when there is no doubt as to their status.

The U.S. gives combatants Combat Status Review Tribunal hearings, known as CSRTs, to determine their status and review the need for their continued incarceration.

If this were not enough, there is a review process under the Detainee Treatment Act, passed last year, to which detainees are also subjected.

There is no need for further review processes for these enemy combatant detainees. An enemy combatant detainee sounds a little sterile, but take a look at the name that is often referred to dealing with this. The Supreme Court case which brought about the need for this legislation deals with Hamdan. Let's be clear, Hamdan was Osama bin Laden's body guard and driver. This is the kind of person about whom we are talking. Giving unlawful enemy combatants such as these U.S. domestic habeas rights is inappropriate. These people are not U.S. citizens, arrested in the U.S. on some civil offense; they are, by definition, aliens engaged in or supporting terrorist hostilities against the U.S., and doing so in violation of the laws of the war.

Some may not have been around long enough to remember that the U.S. detained hundreds of thousands of German and Japanese soldiers, captured on World War II battlefields. We didn't give these enemy combatants access to U.S. domestic courts or habeas corpus rights. Not only would that have been absurd, it would have totally bogged down the legal system.

There has never been a legal question over the appropriateness of a separate military process for enemy combatants. We should not now start admitting them to the U.S. domestic legal process.

Current military review processes are more than adequate. Indeed, they exceed international standards. Granting enemy combatants additional U.S. do-

mestic habeas corpus rights is unnecessary and inappropriate.

I urge my colleagues to oppose this amendment.

I yield the floor.

The PRESIDING OFFICER. Who yields time? The Senator from Virginia is recognized.

Mr. WARNER. Mr. President, at this time, I observe no other Senators desiring to address the subject with regard to the pending bill. Having said that, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WARNER. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDING OFFICER (Mr. VITTER). Without objection, it is so ordered.

VOTE EXPLANATION

Mr. MCCAIN. Mr. President, due to the passing of a close friend, I was not present for the vote on amendment No. 5086, offered by Mr. LEVIN. With whis statement, I would like to inform the Senate that, had I been present, I would have voted against this amendment, which sought to strike the pending legislation on military commissions and insert the text of the bill reported out of the Armed Services Committee.

Senators WARNER, GRAHAM and I wrote and supported the bill that was reported out of the Senate Armed Services Committee. Over the past 2 weeks, however, we have been involved in negotiations with the White House and the House of Representatives and reached a compromise.

The compromise legislation, which I support, does not redefine the Geneva Conventions in any way. It amends the War Crimes Act—which currently says only that a violation of Common Article 3 is a war crime—by enumerating nine categories of offenses that constitute “grave breaches of Common Article 3” and thus are war crimes, punishable by imprisonment or death.

The bill authorizes the President to interpret the Geneva Conventions—a power he has already under the Constitution—as to what constitute nongrave breaches. These interpretations must be published in the Federal Register, and they will have same force as other administrative regulations, and thus may be trumped by law passed by Congress.

I am pleased with the agreement that we have reached with the administration and I support this legislation in the form pending on the floor. For this reason, if I had been present, I would have cast my vote against amendment No. 5086.

Mr. ROBERTS. Mr. President, I rise today in support of the timely passage of this legislation. In my view it is essential to the successful prosecution of our war against the terrorists.

Ever since the Supreme Court announced its decision in the case of *Hamdan v. Rumsfeld*, I have made clear that my three primary goals for legislation authorizing military tribunals were: (1) Adjudicating the cases of detained terrorists in proceedings that are consistent with our values of justice, (2) protecting classified information, and (3) ensuring that our military and intelligence officers have clear standards for what is, and is not, permissible during detention and interrogation operations.

After discussing these issues with National Security Adviser Hadley and officials at the Department of Justice, I am comfortable in saying that this legislation accomplishes each of those goals.

First, the legislation authorizes the President to establish military commissions for the trial of unlawful enemy combatants. Enemy combatants tried under this legal system will have the benefit of a comprehensive process that assures them of legal representation, access to witnesses and evidence, the ability to present a defense, and the ability to appeal any judgment to the Court of Military Commission Review, the DC Circuit Court of Appeals, and, ultimately, to the Supreme Court.

I dare say that some who may be tried by these military commissions will receive more due process and legal protection than they were ever willing to grant to others.

Second, while ensuring a full and fair process, the legislation also recognizes the important role that classified information is likely to play in these trials. The legislation expressly provides the government with a privilege to protect classified information. At the same time, the bill provides a number of ways for the trial court to ensure that the defendant is sufficiently apprised of the evidence to be used against him. I think this bill strikes the right balance between providing a full and fair process, and protecting classified information.

Third, and most important to me as chairman of the Intelligence Committee, the bill provides military and intelligence officers conducting detention and interrogation operations with clear standards.

Why is this so important? Because, there is a consensus in the intelligence community that terrorist interrogations are the single best source of actionable intelligence against the plots of a determined enemy.

Interrogation is a tool used by our brave men and women in the military and intelligence community to combat a continuing terrorist threat from those who are bent on attacking and killing Americans.

The majority of useable and actionable intelligence against al-Qaida comes from terrorist interrogations and debriefings. This tool is vital to keeping Americans safe—it is irreplaceable and it must be preserved.

Of particular note is the CIA's detention and interrogation program, which

has been a supremely valuable source of information. This program has produced intelligence that has helped disrupt terrorist networks and prevent terrorist attacks. Furthermore, it has been carefully monitored to ensure that it complies with all our laws.

But, the Supreme Court's decision in *Hamdan* applied the Geneva Convention's Common Article 3 to unlawful enemy combatants. This threatened to shut down the CIA's detention and interrogation operations.

The standard articulated in Common Article 3 is extremely vague. This standard leaves military and intelligence officers in the dark as to what is, and what is not, permitted in detaining and interrogating unlawful enemy combatants. Moreover, because under current law any violation of Common Article 3 is a criminal violation, our interrogators potentially could be subjected to criminal prosecution for otherwise lawful actions.

Consequently, Congress must act to ensure that our military personnel and intelligence officers are not forced to operate, or be subjected to prosecution, under such a vague standard. It is our responsibility to provide clear guidance to military personnel and intelligence officers as to what is, and is not, permitted in interrogations. The standard must be clear enough so that our intelligence officers, who are making judgment calls in the field, can continue to operate.

The legislation currently before the Senate provides that clarity. It expressly provides for what acts constitute grave breaches of Common Article 3 and what acts would be subject to prosecution. It further allows the President to promulgate regulations for lesser violations of treaty obligations.

As a result, in passing this legislation, we will give the dedicated and honorable Americans on the front lines in the war on terror the clarity they need to fulfill their mission.

To win this war and keep Americans safe, our troops in the field and our law enforcement personnel here at home need timely and actionable intelligence. We get that intelligence in many forms such as satellite imagery, intercepted communications, financial tracking and human intelligence, including interrogations. In the past months, many of these intelligence collection tools have been damaged by deliberate leaks of classified information.

We can ill afford to lose any of these intelligence collection tools if we are to succeed. I am grateful that this bill will allow our Nation to continue its highly valuable interrogation programs.

I support the bill, and I urge my colleagues to do the same.

Mr. WARNER. Mr. President, we have had a very good debate. We have voted on one amendment. We have time remaining on the Specter amendment. We should be able to conclude that debate in the morning and pro-

ceed, I presume, to a prompt vote on the Specter amendment, and then proceed with the other two amendments.

MORNING BUSINESS

Mr. WARNER. Mr. President, I ask unanimous consent that the Senate now proceed to a period for the transaction of morning business, with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

ULTRASOUND IMAGING

Mr. FRIST. Mr. President, I rise to speak about the use of ultrasound imaging by emergency physicians. October 2006 marks the 10-year anniversary of the establishment of the American College of Emergency Physicians, ACEP, Section of Emergency Ultrasound, which actively encourages research and training of emergency physicians in the use of emergency ultrasound. October 15, 2006, celebrates Emergency Ultrasound Day.

As a trauma surgeon, I spent many days and nights serving the emergency department. Emergency ultrasound, defined as the use of ultrasound imaging at the patient's bedside, is a critical component of quality emergency medical care. Ultrasound imaging enhances the physician's ability to evaluate, diagnose, and treat patients in the emergency department. It provides immediate information and can answer specific questions about the patient's physical condition, such as determining whether a presenting patient has thoracic and abdominal traumas, ectopic pregnancy, pericardial effusion, and many other conditions.

High-quality emergency care is dependent on rapid diagnostic tools, enhanced safety of emergency procedures, and reduced treatment time. Imaging technology has greatly improved quality of care and made invasive medical procedures safer.

Emergency physicians are trained in the use of imaging equipment during their residency as well as continuing medical education courses. Hospital privileges further validate this training.

Emergency ultrasound has moved outside the hospital due to its compact nature. In fact, emergency ultrasound technology is helpful onsite during military and disaster medical care. It has served in the care of America's brave military troops during both the gulf and Iraq wars. Also, emergency ultrasound was used to care for patients last year after Hurricane Katrina and will be helpful in responding to other disasters and mass casualty events.

Mr. President, I congratulate the work of the ACEP Section of Emergency Ultrasound. It has increased awareness of the contribution and value of emergency ultrasound by emergency physicians in the medical