

After the Supreme Court ruling

Congressional Democrats join with Republicans to maintain military commissions at Guantánamo

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In the aftermath of Thursday's Supreme Court ruling barring the use of military commissions set up by the Bush administration to try detainees at the Guantánamo detention facility, the White House and Republicans in Congress have initiated a drive to provide congressional sanction for the commissions. Leading Democrats have already signaled that they will cooperate with the Republicans to pass such legislation.

Whether any legislation that eventually emerges simply ratifies the existing commissions and the procedures laid down by the Bush administration, or introduces modifications to make the flouting of due process less brazen, the central purpose of the effort is to circumvent the substance, if not the letter, of the Supreme Court's ruling.

The 5-3 decision, authored by Justice John Paul Stevens, not only rejects the Bush administration's asserted power to unilaterally establish the commissions, without congressional sanction, it also insists that any procedure for trying detainees conform to standards of due process laid down by both the Geneva Conventions and the Uniform Code of Military Justice of the United States.

Following the ruling, Senate Armed Services Committee Chairman John Warner (Republican of Virginia) and the ranking Democrat on the committee, Carl Levin of Michigan, announced in a joint statement that the committee would hold hearings on the legal foundations and procedures for military tribunals "in preparation for the consideration in September of such legislation as may be required."

Senate Judiciary Committee Chairman Arlen Specter

(Republican of Pennsylvania) promptly introduced on the Senate floor the "Unprivileged Combatant Act," which, he said, would give legislative approval to the existing tribunals while addressing the legal requirements of the Supreme Court ruling. He announced that his committee would hold hearings on the proposal July 11, immediately after the Senate reconvenes following the July 4 Independence Day recess.

Patrick Leahy of Vermont, the ranking Democrat on the Judiciary Committee, signaled his willingness to cooperate in passing such legislation. "I remain ready to work with the president, as I have repeatedly offered over the years, to ensure that the war on terror is prosecuted consistent with our laws and fundamental values," he said in a statement issued on his web site Thursday.

Adam Schiff, a California Democrat on the House Judiciary and International Relations committees, already introduced legislation in June of last year to provide legislative sanction for the Guantánamo military commissions. A key purpose of Schiff's bill, which was co-sponsored by five other Democrats, is, according to the language of the bill itself, "to affirm the authority of the executive branch to detain foreign nationals as unlawful combatants."

The rapid-fire response of the White House and both Republican and Democratic congressional leaders to the court ruling makes it clear that they had prepared in advance for a decision unfavorable to the Bush administration.

Within minutes of the Supreme Court ruling being

handed down, Senator Warner was on hand to give a statement to the press in which he outlined the Republican strategy in Congress. Shortly thereafter, during a joint appearance with the visiting Japanese Prime Minister Junichiro Koizumi, Bush alluded to Warner's remarks and indicated that he would work with Congress to preserve the commissions while "conforming" to the high court ruling.

The majority opinion in Thursday's decision in *Hamdan vs. Rumsfeld* broadly and sharply rejects key legal claims made by the Bush administration to justify not only the military commissions, but also the establishment of secret prisons, the torture of detainees, and the abduction of alleged terrorists and their secret transfer to countries notorious for the use of torture. These claims have been used as well to justify massive and secret domestic spying operations against Americans.

The Supreme Court rejected the claim that the joint resolution entitled "Authorization for Use of Military Force," passed by Congress in September 2001, gave the president, as commander in chief, virtually unlimited powers, including the power to unilaterally establish military commissions lacking elementary due process rights for prisoners captured in the "war on terror" and held by the United States.

The ruling further rejected the position of the administration that the Geneva Conventions do not apply to such prisoners, affirming the Conventions' applicability to the detainees incarcerated at Guantánamo. It also dismissed the administration's contention that the Detainee Treatment Act, passed with bipartisan support in December of last year, stripped the courts of jurisdiction over legal suits that had been filed in behalf of Guantánamo detainees.

The ruling did not order the release of the more than 400 people illegally incarcerated in Guantánamo, nor did it prevent the US government from holding them indefinitely without charging them or bringing to trial. Rear Admiral Harry B. Harris, commander of the Guantánamo prison camp, responded to the decision by saying, "From my perspective, I think the direct impact will be negligible."

It also left open the possibility that the military commissions could be changed to meet constitutional requirements, and invited Congress to intervene for this purpose. Justice Stephen Breyer, who signed onto the

majority ruling, spelled this out, stating, "Nothing prevents the President from returning to Congress to seek the authority he believes necessary."

It is clear that the Republicans intend to use Thursday's ruling against the Democrats in the campaign for the November midterm elections. They have deliberately scheduled debate on legislation to sanction the military commissions for September, when the campaigns for the House of Representatives, the Senate and state offices get into full swing.

In the 2002 midterm elections, the White House and congressional Republicans insisted on holding votes on resolutions authorizing Bush to use force against Iraq in October, in the run-up to Election Day, in order to exploit the divisions within the Democratic Party and expose the bogus character of its criticisms of Bush's war preparations. Similarly, in 2006, they will exploit the cowardice and complicity of the Democrats in relation to the military commissions and the Supreme Court ruling.

Using pseudo-populist rhetoric to attack the Supreme Court from the right, accusing the "liberal" majority of usurping the will of Congress and the people, undermining the "commander in chief" in war-time, and aiding and abetting the terrorists, the Republicans will label the Democrats as accomplices of the traitors on the high court.

There is no mystery as to how the Democrats will respond. They will frantically avow their unequivocal support for the "global war on terror" and prove it by supplying the Republicans with the votes they need to pass legislation to keep the military commissions going. At the same time, they will seek to outflank the Republicans from the right, charging that the Bush administration's open flouting of US and international law on prisoners of war undermines American prestige and credibility abroad, impedes US "success" in Iraq, and weakens the US in the "war on terror."



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