



HOUSE ARMED SERVICES COMMITTEE DUNCAN HUNTER – CHAIRMAN

PRESS RELEASE

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CHAIRMAN HUNTER OPENING STATEMENT

Hearing on Military Commissions and Tribunals

Washington, D.C. – This hearing addresses standards for military commissions for trials involving war crimes. First, I want to welcome a new member to the Committee, Representative Brian Bilbray, from California.

In Hamdan, the Supreme Court denied the government’s motion to dismiss, stating the Detainee Treatment Act of 2005, which Congress passed at the end of last year, did not deprive the Court of jurisdiction. The Court also held that the President’s rules for military commissions are illegal because they do not conform to the Uniform Code of Military Justice and because they do not conform to one article of the Geneva Conventions. I think we need to take a close look at each of these rulings.

But before we go any further, we need to do a re-set. Make no mistake about it, the United States is engaged in a war with terrorists. Whether we call it a “long war” or a “global war against terrorism” or some other term, this nation is at war. The enemy declared war in 1996, when Osama Bin Laden declared a jihad against America. In continued on September 11th and it continues today. We are at war. And we may be for a long time.

I emphasize this at the outset because we are here to address how America fights wars. All three branches of government are involved in this discussion with the Supreme Court’s decision in Hamdan v. Rumsfeld. In Hamdan, the Supreme Court told us to start over when it comes to trying the enemy as war criminals. We need to start over, not just because the Court told us too, but because we are in a new type of war against a new type of enemy.

Justice Thomas put it best in Hamdan. He said we are “not engaged in a traditional battle with a nation-state, but with a world-wide, hydra-headed enemy, who lurks in the shadows conspiring to reproduce the atrocities of September 11, 2001, and who has boasted of sending suicide bombers into civilian gatherings, has proudly distributed videotapes of beheadings of civilians workers, and has tortured and dismembered captured American soldiers.”

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Who are we dealing with in military commissions? We are dealing with the enemy in war, not defendants in our domestic criminal justice system. Some of them have returned to the battlefield after we let them out of Guantanamo. Our primary purpose is to keep them off the battlefield. In doing so we treat them humanely and if we choose to try them as war criminals we will give them due process rights that the world will respect. But we have to remember they are the enemy in an ongoing war.

In this new war, where intelligence is more vital than ever, we want to interrogate the enemy. Not to degrade them, but to save the lives of Americans troops, American civilians, and our allies. But it may not be practical on the battlefield to read the enemy their Miranda warnings.

Classified information is another area which we do to look closely at. Do we want to give the enemy the sources and methods of how we obtain information? Court-martials and federal criminal trials have special rules to protect classified information for our soldiers and civilians but do we want to give battle intelligence to terrorists?

In time of war it may not be practical to apply to rules of evidence that we do in civilian trials or court-martials for our troops. Will commanders and witnesses be called from the frontline to testify in a military commission or can we use reliable hearsay and sworn affidavits? I note that hearsay is allowed in international war crime tribunals for Rwanda and Yugoslavia.

Justice Stevens and Justice Kennedy, who both shaped the Hamdan opinion, each stated that there could be justification for deviation from the old rules in this new war. Justice Stevens simply said the President did not make such a justification for the rules regarding military commissions, although he said such a justification might be proper if “some practical need explains deviations from court-martial practice.” Justice Kennedy said “if congress, after due consideration, deems it appropriate to change the controlling statutes, in conformance with the Constitution and other laws, it has the power and prerogative to do so.”

So let's see if there is a need or a practical reason to change the rules. We have to give the executive the tools to fight this war. This is not a separation of powers issue, it is an issue of how to defeat the enemy. The Supreme Court says we need an adjustment, but in doing so let's not forget our purpose is to defend the nation against the enemy. We won't lower our standards, we will always treat detainees humanely, but we can't be naive either.

This war started in 1996 with the al Qaeda declaration of jihad against the nation. The Geneva Conventions were written in 1949 and the USMJ was adopted in 1951. In that sense, Hamdan may be broader than war crimes trials, it may be the start of a new legal analysis of the long war. It is time for us to think about war crime trials and a process that provides due process and protects national security in the new war.

Whatever we decide, we will uphold basic human rights and state what our compliance with this standard means for the treatment of detainees. I am sure we can do this in a way that is fair and the world will acknowledge as fair.

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