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No Legal Rights for Enemy Combatants, Scalia Says

'War Is War,' Justice Tells Audience

Associated Press

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Supreme Court Justice Antonin Scalia reportedly told an overseas audience this month that the Constitution does not protect foreigners held at the U.S. military prison at Guantanamo Bay, Cuba.

He also told the audience at the University of Freiburg in Switzerland that he was "astounded" by the "hypocritical" reaction in Europe to the prison, this week's issue of Newsweek magazine reported.

The comments came just weeks before the justices are to take up an appeal from a detainee at Guantanamo Bay. The court will hear arguments tomorrow on Salim Ahmed Hamdan's assertion that President Bush overstepped his constitutional authority in ordering a military trial for the former driver of al-Qaeda leader Osama bin Laden. Hamdan has been held at the prison for nearly four years.

Two years ago, the Supreme Court ruled that the detainees could use U.S. courts to challenge their detention. Scalia disagreed with that ruling, and in the recent speech repeated his beliefs that enemy combatants have no legal rights.

"War is war, and it has never been the case that when you captured a combatant you have to give them a jury trial in your civil courts," Newsweek quoted Scalia as saying. "Give me a break."

Scalia's dissent in the *Rasul v. Bush* case in 2004 said: "The consequence of this holding, as applied to aliens outside the country, is breathtaking. It permits an alien captured in a foreign theater of active combat to bring a petition against the secretary of defense. . . . Each detainee (at Guantanamo) undoubtedly has complaints -- real or contrived -- about those terms and circumstances. . . . From this point forward, federal courts will entertain petitions from these prisoners, and others like them around the world, challenging actions and events far away, and forcing the courts to oversee one aspect of the executive's conduct of a foreign war."

Newsweek said Scalia was challenged by an audience member in Switzerland about whether Guantanamo Bay detainees have protection under the Geneva or human rights conventions.

Scalia replied: "If he was captured by my army on a battlefield, that is where he belongs. I had a son on that battlefield and they were shooting at my son, and I'm not about to give this man who was captured in a war a full jury trial. I mean it's crazy," Newsweek reported.

Scalia's son Matthew served in Iraq.