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Hamdan Case Tests President's Authority

OUR OPINION: SEPARATION OF POWERS HANGS IN BALANCE OF COURT DECISION

Editorial
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It isn't clear if Salim Hamdan is an al Qaeda terrorist or simply a driver who got a job with Osama bin Laden because he needed the \$200 monthly paycheck. What is certain is that this case, now before the U.S. Supreme Court, will test the limits of a U.S. president's powers. Moreover, the treatment of Mr. Hamdan shows how far the U.S. government has gone to create new rules for the "war on terror" and how little oversight Congress has had in these matters.

The questions raised in this case also give the White House a chance to review how it handles "unlawful combatants" in the fight against a stateless enemy in an ideological battle that has no foreseeable end.

An enemy combatant

The idea that the U.S. president has more power in wartime is well established. The question is: How far can those powers go? The Hamdan case questions whether President Bush had the power to create the new military commissions set to try accused terrorists at the U.S. Naval Base in Guantánamo Bay.

At stake is the delicate balance that allows the government's three branches to review and check each others powers, even in wartime. Critics believe that ultimately the United States risks undermining its own effectiveness against terrorism by establishing military war tribunals that defy the U.S. Constitution and settled international law.

President Bush declared Mr. Hamdan an enemy combatant, and the latter now has been imprisoned at Guantánamo for four years. U.S. military prosecutors say that he is a conspirator in al Qaeda's terrorist organization. Mr. Hamdan claims he's a truck driver, not a war criminal.

Mr. Hamdan is among ten Guantánamo captives set to be tried in the military commissions created by the Pentagon. The procedures do not provide the legal protections embedded in U.S. law and the Uniform Code of Military Justice; and they violate accepted trial standards. Not surprisingly, the process has been condemned by attorneys from every branch of the U.S. military, the American Bar Association and numerous human-rights groups.

The legal issues before the Supreme Court are key to the wartime powers of President Bush and all who follow him in the office. Oral arguments that began last week raised important questions: Does the Supreme Court have jurisdiction to rule in Hamdan's case? Do U.S. courts have jurisdiction to hear a basic challenge to detention by someone accused of terrorism before that person has been tried by the military commissions? Should the commissions conform to U.S. and international laws, including the Geneva Conventions? Is conspiracy a valid war crime?

Moral, legal standards

If this is not a conventional war, as President Bush argues, the United States might find it more effective to pursue al Qaeda as a criminal enterprise.

The U.S. criminal trials of al Qaeda conspirators Ahmed Omar Abu, sentenced last week to a 30 year term, and Zacarias Moussaoui, who is facing a potential death penalty, serve as good

examples. The United States can effectively prosecute accused terrorists without sacrificing its moral and legal standards.