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## **Supreme Court: Detainees' Rights-Scalia Speaks His Mind**

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March 27, 2006 issue - The Supreme Court this week will hear arguments in a big case: whether to allow the Bush administration to try Guantánamo detainees in special military tribunals with limited rights for the accused. But Justice Antonin Scalia has already spoken his mind about some of the issues in the matter.

During an unpublicized March 8 talk at the University of Freiburg in Switzerland, Scalia dismissed the idea that the detainees have rights under the U.S. Constitution or international conventions, adding he was "astounded" at the "hypocritical" reaction in Europe to Gitmo. "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," he says on a tape of the talk reviewed by NEWSWEEK.

"Give me a break." Challenged by one audience member about whether the Gitmo detainees don't have protections under the Geneva or human-rights conventions, Scalia shot back: "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." Scalia was apparently referring to his son Matthew, who served with the U.S. Army in Iraq. Scalia did say, though, that he was concerned "there may be no end to this war."

The comments provoked "quite an uproar," said Samantha Besson, a member of the Freiburg law faculty who had invited Scalia to give his talk, which was mostly about his "originalist" interpretation of the Constitution.

This isn't the first time Scalia has commented on matters before the court: two years ago he recused himself from a Pledge of Allegiance case after making public comments about the matter. "This is clearly grounds for recusal," said Michael Ratner of the Center for Constitutional Rights, a human-rights group that has filed a brief in behalf of the Gitmo detainees. "I can't recall an instance where I've heard a judge speak so openly about a case that's in front of him-without hearing the arguments." Other experts said it was a closer call.

Scalia didn't refer directly to this week's case, *Hamdan v. Rumsfeld*, though issues at stake hinge in part on whether the detainees deserve legal protections that make the military tribunals unfair. "As these things mount, a legitimate question could be asked about whether he is compromising the credibility of the court," said Stephen Gillers, a legal-ethics expert. A Scalia recusal (it's entirely up to him) would create problems; Chief Justice John Roberts has already done so in *Hamdan* because he ruled on it as an appellate judge. A Supreme Court spokeswoman said Scalia has no comment.