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An Excerpt

**THE SUPREME COURT MÉNAGE À TROIS:
THE COURT, THE PUBLIC AND THE MEDIA IN *HAMDI V. RUMSFELD***
Michael C. Ferrera – Macalester College

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Editor's Note

With great pleasure, I present the first issue of the Amherst College Interdisciplinary Undergraduate Law Journal. A year in the making, this issue has been an educational experience for each of us involved in its development and implementation.

Today's difficult, juridical questions require an approach that goes beyond the scope of traditional legal training and scholarship. The IULJ seeks to fulfill the goal of the Amherst College Department of Law, Jurisprudence, and Social Thought in bringing a unique multi-disciplinary approach to answering these complex multi-faceted societal issues. We hope to publish articles that focus on a variety of areas, including history, philosophy, ethics, the law, popular culture, literature, and film, to more fully address these modern juridical problems.

I would like to offer my many thanks to all those who helped in the process of starting and producing this journal. I would like to thank: the Editorial Board for their tireless work in sending out the many calls for papers to colleges and universities across the globe and for reviewing, evaluating, and editing submissions; our advisor, Professor Adam Sitze, for his help in shaping the ideas I had in mind when starting this publication and for offering encouragement and guidance along the way to make this journal what it now is and will become; Professor Austin Sarat for his guidance and wisdom in the formulation and operation of the journal; Megan Estes, the department coordinator, for her help with countless essential administrative tasks; Professor Nasser Hussain, the Department Chair, for allowing the journal the opportunity to be associated with the LJST department; and finally all those that contributed articles to this issue.

We hope you enjoy the issue and find it informative.

Sincerely,

Adam Shniderman

Editor-in-Chief/Founder

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The Supreme Court Ménage à Trois: The Court, the Public and the Media in *Hamdi v. Rumsfeld*

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Macalester College – Class of 2009

Abstract:

The Supreme Court, wrote Alexander Hamilton in Federalist No. 78, has “no influence over either the sword or the purse.” Some have argued that while the judiciary possesses neither power, it possesses another one that is just as legitimate: the power of public opinion. The Court does not directly interact with the public; however, it does rely on the media to deliver its message to the public. The media, therefore, has a demonstrable capacity to distort the case through framing. It has long been argued that media frames have a noticeable effect on public opinion. Therefore, in analyzing the media’s treatment of a give case, we can try to determine what effect, if any, the media had on public opinion.

As the first of many challenges to executive action in the post-9/11 world, *Hamdi v. Rumsfeld* set important precedents. Hamdi, an American citizen, was captured by US troops in Afghanistan and detained without sentencing for months. In this paper, I examine the media’s rhetoric and framing of the case before and after the Court’s decision so as to theorize the media’s effect on public opinion and whether positive frames could have primed the public to accept the Court’s ruling.

Introduction:

In 2004, the United States Supreme Court agreed to hear the case of an American citizen who was being detained by the US government without charge or access to a lawyer. That citizen, Yaser Esam Hamdi, was born an “accidental American.”³² His father, Esam Fouad Hamdi, was a Saudi oil executive working in Louisiana on a joint US-Saudi oil venture when Hamdi was born in 1979. At the age of three, Hamdi and his family moved back to Saudi Arabia; he would not touch US soil again as a free man. In 2001, Hamdi was captured in Afghanistan by the Afghan Northern Alliance. He was detained at Camp X-Ray in Guantanamo Bay, Cuba until

³² Richard Leiby, “An American Justice: Free-Spoken Judge Challenges the White House Over ‘Combatant’ Rights,” *The Washington Post*, September 6, 2002: C01.

the Department of Defense discovered that he was a US citizen. He was then transferred to a Naval Brig in Virginia where he remained there without access to a lawyer until December 2003. The Supreme Court heard oral arguments in *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004), on April 28, 2004.

In the eyes of the Bush Administration, Hamdi was a threat to national security. The government initially argued that access to a lawyer might interrupt his isolation and interrogation, harming the government's ability to gain intelligence from Hamdi. He was only allowed access to a lawyer in 2003 after the government decided that his intelligence value had been exhausted. Hamdi's case represented one of the first instances in which the Court repudiated the Executive during wartime. Often passive during times of national emergency, the Supreme Court used judicial review as a backstop to executive overreaching. The Court's decision mandated that Hamdi be guaranteed due process, and consequently, an attorney. Insofar as the public views the Court as an impartial body, the Supreme Court derives its legitimacy from public opinion. The Court insulates itself from the public, avoiding direct contact, in an effort to maintain this legitimacy in the public eye.

Since the Court is so dependent on public opinion, but refrains from direct interaction, it falls on the media to report on the Supreme Court. The media possesses a significant amount of independent political power: it can have a substantial effect on the way the public views the Court or the issues that come before the Court through the use of issue frames and priming. Due to *Hamdi*'s post-9/11 novelty (as a departure from the Court's tendencies in previous wars), it is useful to analyze the case to see the ways the media framed the case and how those frames could have influenced public opinion. This article examines the newspaper articles about Hamdi from

January 1, 2002 through December 31, 2004 in an attempt to understand and interpret the media's framing of the case and the effects those frames had on public opinion.

The media's presentation of the case discernibly favored Yaser Esam Hamdi. The issue was framed as one of rights and the limits of Executive power, as opposed to one of national security. Discussions of rights and Executive power are much less sensationalistic or emotional than discussions of national security and terrorist attacks. Quotes selected from legal professionals, in addition to those from oral arguments and the majority opinion further legitimized the media's rights-talk frame. Furthermore, Hamdi has often been presented as a "detainee" rather than an "enemy combatant." These frames and rhetoric ultimately helped Hamdi's case because they shied away from the language of national security threats: instead, Hamdi was depicted as a US citizen fighting for his rights.

There are some limits to this research. It is impossible to know if the coverage of Hamdi had any definitive influence over the public without the use of extensive interviews or public opinion polls. However, if we accept that the previous research regarding media frames and the public is trustworthy, it is possible to argue that the media could have affected public opinion in Hamdi's case as well.

The Court, the Public and the Media:

The Supreme Court is arguably the most secretive, and least understood branch of the federal government.³³ The very nature of the Court (as prescribed by the Constitution) ensures that the Court will be removed and insulated from society. A comparatively weak institution, the Supreme Court has neither the sword of the Executive nor the purse of the Legislature; instead,

³³ Valeria J. Hoekstra, "The Supreme Court and Local Public Opinion," *The American Political Science Review* 97 (2000).

the Court must rely upon both of those branches to execute and fund its rulings.³⁴ The Executive and Legislative branches derive legitimacy from their constitutional power to develop policy; meanwhile, the Court does not have such an obvious mechanism that it can use to give legitimacy to a policy. In response to this relatively weak position, the “received wisdom” states that the Supreme Court can confer legitimacy on a policy insofar as it has the capacity to influence public opinion of a given policy simply by handing down a positive decision.³⁵

There has been much scholarly disagreement through the years over the Court’s ability to influence public opinion. Some have found circumstantial evidence to suggest that the Court does not possess the requisite public attention or recognition to legitimate a policy and affect public opinion;³⁶ many argue that, often, the Court tends to reflect public opinion rather than influence it.³⁷ Other scholars have instead come to different conclusions, claiming that these studies have methodological and/or theoretical flaws:³⁸ instead, these scholars believe that the Supreme Court does have a legitimating function and can, in some instances, dramatically influence public opinion³⁹ by issuing a decision regarding the policy in question.⁴⁰ If the Court can influence the legitimacy of policy, we are left to wonder from where it derives its power: studies focusing on the relationship between the Court and the public have varied greatly –

³⁴ Jeffrey J. Mondak and Shannon I. Smithey, “The Dynamics of Public Support for the Supreme Court,” *The Journal of Politics* 59 (1997).

³⁵ Rosalee A. Clawson, Elizabeth R. Kegler, and Eric N. Waltenburg, “The Legitimacy-Confering Authority of the U.S. Supreme Court,” *American Politics Research* 29 (2001).

³⁶ David Adamany and Joel B. Grossman, “Support for the Supreme Court as a National Policymaker,” *Law and Policy* 5 (1989).

³⁷ Thomas R. Marshall, *Public Opinion and the Supreme Court*, (Boston: Unwin Hyman, 1989).

³⁸ Valerie J. Hoekstra, “The Supreme Court and Opinion Change: An Experimental Study of the Court’s Ability to Change Opinion,” *American Politics Quarterly* 23 (1995).

³⁹ Hoekstra, “The Supreme Court and Opinion Change.”

⁴⁰ Anke Grosskopf and Jeffrey J. Mondak, “Do Attitudes Toward Specific Supreme Court Decisions Matter? The Impact of *Webster* and *Texas v. Johnson* on Public Confidence in the Supreme Court,” *Political Research Quarterly* 51 (1998).

demonstrating that the relationship between the public and the Court is often misunderstood – but it is believed that the Court derives most of its power as a functional government body from the public.

The only power that the Court possesses is the “power of public opinion.”⁴¹ That is not to say that the public must agree with everything the Court decides. Popular support of the Court is limited and can change over time as a result of the actions of the Court and of external political conditions.⁴² Whether or not the public agrees with a decision, it must view the Court as a legitimate government institution, occupied by justices who use the Constitution and previous case law when making their decisions – not simple partisan hacks. It is crucial that the Court is seen as a legitimate government body not only because it must derive its power from popular faith in its decisions but also, more generally, because government institutions function best when the public believes that they are legitimate,⁴³ a disgruntled public has no incentive to abide by the decisions of a Court that it sees as illegitimate.⁴⁴ Scholars believe that the Court is able to maintain its legitimacy despite unpopular decisions, in part because it possesses a “reservoir of goodwill” which helps it survive such times.⁴⁵ For example, during the turbulent 1960s when other government institutions saw a rapid decline in public support, support for the Court remained relatively constant.⁴⁶

⁴¹ Richard Davis and Vincent J. Strickler, “The Invisible Dance: The Supreme Court and the Press,” *Perspectives on Political Science* 29 (2000).

⁴² George A. Caldeira, “Neither the Purse nor the Sword: Dynamics of Public Confidence in the Supreme Court,” *The American Political Science Review* 80 (1986).

⁴³ Jeffrey J. Mondak, “Perceived Legitimacy of Supreme Court Decisions: Three Functions of Source Credibility,” *Political Research Quarterly* 47 (1994).

⁴⁴ Mondak and Smithy, “The Dynamics of Public Support for the Supreme Court,” (1997).

⁴⁵ Grosskopf and Mondak, “Do Attitudes Toward Specific Supreme Court Decisions Matter?” (1998).

⁴⁶ Gregory A. Caldeira, and James L. Gibson, “The Etiology of Public Support for the Supreme Court,” *American Journal of Political Science* 36 (1992).

If we are to believe that the Court needs to be viewed as a legitimate government body by the public because its power is derived from public opinion, we must ask why the Court is viewed as a legitimate body, and what mechanisms the Court uses to maintain such a position. The more traditional belief holds that the Court derives its support from a kind of mythical quality,⁴⁷ a theory that has been referred to as “Legitimacy as Myth.”⁴⁸ The justices steep themselves in tradition, “operating behind the ‘purple curtain,’” the Court’s members come to be seen as “‘high priests’ of the Constitution” “endowed with a special warrant to protect and interpret that ‘Sacred Text.’”⁴⁹ Another related theory argues that the public looks to the law to fulfill some sort of psychological need for stability and security.⁵⁰ Others believe that the Court gains its legitimacy from its association with the protection of the Constitution and liberties.⁵¹ The mystique that the Court relies on necessitates insulation from the public: if the public were to see behind the curtain, some of the comforting myth may wear off. In order to preserve its magic, the Court does not interact with the public directly in the same ways that Congress or the President interacts with public. Instead, the public hears about and learns about the Court through the *media*.⁵²

The Court does not hold press conferences or interact with the public or the media in easily accessible ways as Executive and Legislative representatives do. It has no official press secretary or press office. Instead, the Court has a Public Information Office. The title implies that the Court is merely giving information to the public, which ignores the fact that the press acts as

⁴⁷ Marshall, *Public Opinion and the Supreme Court*.

⁴⁸ Marshall, 132.

⁴⁹ Clawson, Kegler, and Waltenburg, “The Legitimacy-Conferring Authority of the U.S. Supreme Court.”

⁵⁰ David Adamany, “Legitimacy, Realignment Elections, and the Supreme Court,” *Wisconsin Law Review* 3 (1973).

⁵¹ Adamany and Grossman, “Support for the Supreme Court as a National Policymaker.”

⁵² Jan E. Leighley, *Mass Media and Politics: A Social Science Perspective* (Boston: Houghton Mifflin College Division, 2003).

a link between the public and the Court.⁵³ Toni House, a former public information officer for the Court, acknowledges that the office “doesn’t spin, doesn’t flap, it doesn’t interpret. Our job is to put the news media together with the information they need to cover the Court.”⁵⁴ As these comments by the public information officer imply, the media *does* put its own spin or flap on the issues.

The influence of the media can have very important consequences for the Supreme Court and its rulings. The public’s interpretation of the Court’s decisions can be distorted by the media’s reports.⁵⁵ For instance, the public reacts more negatively towards press reports of a politically motivated Court than a Court that is portrayed as strictly following legal guidelines.⁵⁶ The Court technically interacts with the public through oral arguments and its opinions, but most people receive that information from the media. The majority of the people in the United States do not read the actual decisions that the Court hands down or listen to the oral arguments. The information they receive is distorted (though not necessarily on purpose) by the media and the inherent biases of the journalists. In *Bush v. Gore*, 531 U.S. 98 (2000), for example, opponents in the media framed the decision as “stealing the election” and supporters framed it as a fair and principled vote.⁵⁷ Due to the media’s unique role, the press’s ability to frame the justices as biased could erode the Court’s legitimacy. In this case, the justices could be portrayed as little more than the same old Washington political hacks except that these political hacks wear fancy

⁵³ Davis and Strickler, “The Invisible Dance.”

⁵⁴ Davis and Strickler, 61.

⁵⁵ Davis and Strickler.

⁵⁶ Vanessa A. Baird and Amy Gangl, “Shattering the Myth of Legality: The Impact of the Media’s Framing of Supreme Court Procedures on Perceptions of Fairness,” *Political Psychology* 27 (2006).

⁵⁷ Stephen P. Nicholson and Robert M. Howard, “Framing Support for the Supreme Court in the Aftermath of ‘Bush v. Gore,’” *The Journal of Politics* 65.3 (2003).

robes instead of bad suits. Until the Court allows cameras to film its proceedings,⁵⁸ it will be almost beholden to the media as its only means of communication with the public.

As evidenced by *Bush v. Gore*, the manner in which the media presents an issue to the public can be very important in shaping public reception of that issue. Some scholars have gone as far as to say that the media actually resembles a “fourth branch of the government.”⁵⁹ the public does not have incentives to acquire their own knowledge⁶⁰ and the public does not have an incentive to seek out more information than the media is willing to provide. Reporters are not simply impartial observers of issues. Rather, the media possesses a significant amount of independent political power by choosing from “the myriad events that seethe beneath the surface of government which to describe, which to ignore.”⁶¹ At its worst, the media can be an agent of disorder and confusion, while at its best the media can exert a “creative influence” on Washington politics.⁶² Demonstrably, the media can and does have a significant impact on political events. The way in which the media reports on a subject will shape public opinion; moreover, when public opinion is important, the media will have a substantially larger effect on a given issue. The media’s frames “generally imply a policy direction or implicit answer as to what should be done about an issue.”⁶³

An issue frame, according to Douglas Gamson and Andrew Modigliani is “the central organizing idea or story line that provides meaning to an unfolding strip of events and weaves a

⁵⁸ “Cameras in Courts Through the Years.” *News Media & the Law* 32 (2008).

⁵⁹ Jamieson, Kathleen Hall, and Paul Waldman, *The Press Effect: Politicians, Journalists, and the Stories that Shape the Political World*, (New York: Oxford UP, Incorporated, 2003), 95.

⁶⁰ Samuel L. Popkin, *The Reasoning Voter: Communication and Persuasion in Presidential Campaigns* (New York: University of Chicago P, 1994), 16.

⁶¹ Hall and Waldman, 95.

⁶² Hall and Waldman, 95.

⁶³ Nayda Terkildsen, and Frauke Schnell, “How Media Frames Move Public Opinion: An Analysis of the Women's Movement,” *Political Research Quarterly* 50 (1997).

connection among them.”⁶⁴ The issue frame is the narrative that the media attaches to a certain story. In creating a frame, the media selects certain aspects of a story and makes them more salient in the text, promoting “a particular problem definition, causal relationship, moral evaluation, and/or treatment recommendation.”⁶⁵ The issue frame controls or alters public opinion by dictating the larger narrative of a story, and therefore influences the way that the public perceives an issue. Issue frames can also have significant effects on the information available to the public by shifting the public’s reference points.⁶⁶ The frame or “tone” of the media coverage can influence that issue’s image.⁶⁷ Information which is emotionally compelling will be given greater consideration by a citizen than information which is “statistically more valid, but emotionally neutral.”⁶⁸ Much like “the magician’s sleight of hand,” media framing can define the terms of the debate without the audience realizing it.⁶⁹

The media can also practice what is known as priming. Much like issue framing, priming increases the salience of an issue but refers to the effect of a “preceding stimulus.”⁷⁰ Essentially, media priming can influence the public to view an issue a certain way. By increasing the salience of a given issue, the media can influence how easy it is to recall those same issues when making

⁶⁴ Terkildsen and Schnell, “How Media Frames Move Public Opinion.”

⁶⁵ R. M. Entman, “Framing: Toward a Clarification of a Fractured Paradigm,” *Journal of Communication* 43 (1993).

⁶⁶ Terkildsen and Schnell, “How Media Frames Move Public Opinion.”

⁶⁷ Frank R. Baumgartner and Bryan D. Jones, *Agendas and Instability in American Politics* (New York: University of Chicago P, 1993).

⁶⁸ Popkin, *The Reasoning Voter*.

⁶⁹ James W. Tankard, James W., “The Empirical Approach to the Study of Media Framing,” *Framing Public Life : Perspectives on Media and Our Understanding of the Social World*, Ed. Stephen D. Reese, Oscar H. Gandy and August E. Grant (Danbury: Lawrence Erlbaum Associates, Incorporated, 2003).

⁷⁰ David R. Roskos-Ewoldsen, Beverly Roskos-Ewoldsen, and Francesca R. Dillman Carpentier, “Media Priming: A Synthesis.” *Media Effects : Advances in Theory and Research*. By Pablo Brinol. Ed. Jennings Bryant and Dolf Zillmann (Danbury: Lawrence Erlbaum Associates, Incorporated, 2002).

a political judgment.⁷¹ For instance, when the public evaluates a given president's performance, most Americans do not have the "information or motivation" to learn about all of the president's policies.⁷² The public evaluates the president on a few issues or policies, usually based on the issues in the news. The media can influence public opinion by determining which issues the public uses to make their overall evaluations of the president. The media can determine which issues the public uses when making a decision by raising the profile of some issues and ignoring others; the issues that the media latches on to will be the issues that the public will use to make its judgments.⁷³ Many scholars have performed experiments to examine the practice of priming and framing and the media's ability to prime the public to evaluate a situation in a certain way.

As mentioned before, there cannot be a direct, empirical study of public opinion surrounding *Hamdi v. Rumsfeld*. However, there has been much empirical research detailing the influence that media framing and priming can have on public opinion. One such study by Iyengar, Peters, and Kinder, in 1982, demonstrated that the prominence of a given issue in a newscast can affect the weight or importance that a person places on that same issue.⁷⁴ The researchers performed two experiments; in the first, they assembled two groups of people to watch five newscasts over five days. The experimental group watched the same newscasts but had a story about US defense preparedness embedded into each newscast while the control group did not have such an issue embedded into the newscasts it watched. At the end of the five days,

⁷¹ Dietram A. Scheufele, "Agenda-Setting, Priming, and Framing Revisited: Another Look at Cognitive Effects of Political Communication," *Mass Communication and Society* 2 (2000): 297-316.

⁷² Joanne M. Miller, and Jon A. Krosnick, "Anatomy of News Media Priming." *Do the Media Govern? : Politicians, Voters, and Reporters in America*, Ed. Shanto Iyengar and Richard Reeves (Minneapolis: SAGE Publications, Incorporated, 1997), 258.

⁷³ Miller and Krosnick, "Anatomy of News Media Priming," 260.

⁷⁴ Shanto Iyengar, Mark D. Peters, and Donald R. Kinder, "Experimental Demonstrations of the 'Not-So-Minimal' Consequences of Television News Programs," *The American Political Science Review* 76 (1982).

the groups completed a questionnaire discussing and ranking issues facing the nation. The members of the experimental group consistently ranked US defense preparedness as a more important issue than the members of the control group.

The second study by Iyengar, Peters and Kinder was similar to the first. Instead of just two groups, this experiment had three groups. The groups each watched four newscasts over four days. Each group had its own topical news story that was embedded into the newscasts. The three topics were inflation, pollution and defense. At the end of the experiment, each group had to complete a questionnaire similar to the first experiment. Again, each group consistently ranked their topical issue higher than the other groups ranked their issue; for example, the group that saw the newscasts featuring stories about pollution ranked pollution higher than all the other groups.

Kinder performed another media experiment, this time with Krosnick, which demonstrated that media priming can also affect public opinion of the president.⁷⁵ Krosnick and Kinder interviewed a group before and after November 11, 1986, the day that Attorney General Edwin Meese III publicly confirmed the Iran-Contra scandal. After November 11th, the set of standards that citizens used to evaluate President Reagan changed: they began to focus more on foreign affairs issues, especially those having to do with Central America. Essentially, the media dictated the criteria the public used to judge President Reagan.

It is obvious from these studies that the media can influence public opinion. Issue framing and priming are real, observable phenomena that demonstrably affect public discourse. In order to analyze the media's coverage of Yaser Esam Hamdi's journey through the American legal system, we must look for a few key issues to theorize the media's effect on public opinion.

⁷⁵ Jon A. Krosnick and Donald R. Kinder, "Altering the Foundations of Support for the President Through Priming," *The American Political Science Review* 84 (1990).

We need to analyze the ways that the case was presented to the public so as to theorize the public's reception and interpretation of that information. How is Hamdi's case presented? What are the frames or the overarching themes that the media employs? Is the case presented in an emotionally compelling way or is it emotionally neutral but statistically valid? Does the media mention 9/11 and other potential future terrorist attacks or does it refrain from those references? How is Hamdi himself presented? Is he presented as a dangerous terrorist or as a detained US citizen? The answers to these questions will help us to suppose how the public was primed to view the case and the implications of those particular frames; ultimately, from these observations, and with the help of past studies, we can postulate what effects the media had on the public's reception of the *Hamdi* decision.

Methodology:

In order to analyze the media's framing of *Hamdi v. Rumsfeld*, I will evaluate newspaper and magazine articles from January 1, 2002 to December 31, 2004. The articles were obtained through two Lexis Nexis searches. I first searched for the term "Hamdi" from January 1, 2004 to December 31, 2004. I reviewed the results and selected the ones that were about Yaser Hamdi. I then did a search for "Yaser Hamdi" from January 1, 2002 to December 31, 2003. I chose to use Hamdi's first and last name for this second search because all of the articles from 2004 referred to him by his full name. After removing duplicate articles and articles not pertaining to Yaser Hamdi I had 795 articles—498 from 2004 and 297 from 2002-2003.

I then compiled the results and analyzed the issue frames and rhetoric. Due to the fact that I did not notice any meaningful shift in the themes or rhetoric in 2004, I decided to focus specifically on the articles from two key dates: April 28th, the day the case was heard before the Court, and June 28th, the day the Court handed down its decision. Yaser Hamdi first grabbed the

media's attention in April 2002 but these two days represented large spikes in the number of articles.

Media Coverage (2002-2003):

Yaser Esam Hamdi's status as both citizen and "enemy combatant" was first reported by the media on April 4, 2002 in *The New York Daily News*.⁷⁶ The article, "Gitmo Captive May Be Yank," is a very short (236 words) recitation of the facts. During the remainder of 2002 and 2003, the vast majority of the articles covering the case appear in *The Washington Post*: articles from other newspapers prove to be few and far between. *The Washington Post* garners national attention, especially when it comes to politics, so this result should be neither surprising nor troubling: it is perhaps these first two years of coverage of the case that provide the most revealing data.

The volume of coverage itself can, in a way, serve as a frame or priming mechanism if Hamdi's case is linked with other events that could have an effect on public opinion insofar as the public would then associated Hamdi with those particular events. If Hamdi is mentioned alongside other detainees whenever a terrorist attack occurs at some location throughout the world, such an association could potentially link Hamdi to those terrorists and their actions. This frame would ultimately hurt Hamdi's case because he could come to be seen, first, as a threat to national security, and only second, as an American citizen.

Inspecting the volume of the coverage from 2002, the first noticeable spike occurs in late June. From June 13 through June 16 five articles or editorials from US newspapers were about the *Hamdi* case and two articles from *The Economist* mentioned him as well. This particular spike arose because US Attorneys asked The United States Court of Appeals for the Fourth

⁷⁶ Maki Becker, "Gitmo Captive May Be Yank," *New York Daily News*, April 4, 2002: 20.

Circuit to stay the lower court's order, which granted Hamdi access to a lawyer. Most of the spikes in 2002 and 2003 are similar to this early spike in that they pertain to the media's reporting of new developments in the case: because Hamdi is not linked to any satellite issues, no other issues should have affected popular opinion of Hamdi.

Most articles from 2002 and 2003 are about Hamdi and his legal situation but, interestingly, one of the articles is actually about one of the judges who presided over Hamdi's case in a lower court. "Federal Judge Robert G. Doumar has one word for the Bush Administration's argument [regarding Hamdi]...: 'Idiotic,'" begins the glowing profile of the judge.⁷⁷ The article reveals that Doumar's father immigrated to the United States in 1901 from Syria; his mother is Lebanese: like Hamdi, Robert Doumar is an Arab-American. As a federal judge, Doumar is in a position held only by "loyal" Americans, so to speak; Supreme Court justices and federal judges project the image of Constitutional Guardians. The article presents Doumar as the archetypal American boy as he "lapses into the lingo he learned as a teenager jerking sodas and waiting tables in the 1940s:"⁷⁸ the article suggests that Doumar could easily be your father or your grandfather. The article goes on to chronicle Doumar's service in the Army during the Korean War and his unsuccessful campaigns for state legislature.

The article serves as a positive representation of Arab-Americans in US society, potentially priming the public to associate Hamdi with the positive image of Arab-Americans that we see represented by Robert Doumar. The article is a reminder that there are civic-minded, patriotic Arab-Americans walking among us—they are not all evil terrorists. Both Doumar and Hamdi are citizens of the US, and both should enjoy the same rights; despite what the

⁷⁷ Richard Leiby, "An American Justice: Free-Spoken Judge Challenges the White House Over 'Combatant' Rights," *The Washington Post* 6, September 2002, C01.

⁷⁸ Leiby.

Department of Justice says about Hamdi, his U.S. citizenship demands that he get his day in court. This same article would not be written if the judge and the appellant were both Anglos, or Latinos, or Blacks. In 2002, those groups were viewed differently than Arab-Americans; the need to remind the nation that most Blacks, Latinos or Anglos were patriotic citizens did not exist in the same way that it did for Arab-Americans.

By mentioning Hamdi, Richard Leiby's article helps to associate him with Judge Doumar, and also with a positive image of Arab-Americans in the United States—those who have been assimilated into American society, those who have fought for our country, those whose job it is to uphold the Constitution: in so doing, this article serves as a priming mechanism. Readers will associate Hamdi—potentially portrayed as a “bad” Arab-American—with Doumar, an exemplary citizen whose parents happen to have emigrated from Lebanon and Syria. When Hamdi is mentioned later, associative memory can link the two together, reminding the public that while Hamdi may be an “enemy combatant,” he is still an American citizen. His heritage alone should not strip away the rights that citizenship guarantees; national security is not a sufficient basis upon which to revoke Hamdi's rights and the rights of all Arab-Americans (or Americans in general) accused of taking up arms against the United States. We must rely upon the time-tested American justice system—the same justice system of which Robert Doumar, an Arab-American himself, is an integral and revered participant. By linking Hamdi and Doumar, the article serves to remind the public that Arab-Americans are not a singularly dangerous group to be feared and treated with militancy—instead; they are a complex ethnic group. In the face of other references to Hamdi in the media, Richard Leiby's article would (consciously or subconsciously) remind the public of Judge Doumar and the complexity of the Arab-American community, thereby having a demonstrable effect on public opinion of Hamdi's case.

On May 30, 2002, *The Washington Post* published an article entitled “Access to Lawyer Ordered for Detainee: Judge Rules on US-Born Man Captured in Afghanistan and Held in Norfolk.”⁷⁹ This article is representative of the larger storyline surrounding Hamdi’s case throughout 2002 and 2003 in a number of ways. The article includes quotes from law professors, refers to Hamdi first as a detainee but also as an enemy combatant, and quotes the government and the defense team in an unequal manner. The article is reproduced in Appendix A.

In the title of the article, Hamdi is not referred to as an enemy combatant, but rather as a detainee. The rhetoric of the articles from these first two years is somewhat mixed, but most of the articles from 2002 through 2004 refer to Hamdi as a detainee, a US citizen or as an enemy combatant.⁸⁰ Referring to Hamdi as a detainee or as a detained US citizen, even if just in the article’s title, is an important rhetorical distinction on the part of the media: “enemy combatant” and “detained US citizen” invoke very different images in the minds of readers.

The image of “enemy combatant” seems almost painfully obvious. It presents Hamdi as a fighter or soldier with the enemy—in this case, Osama bin Laden and Al-Qaeda. The word “combatant” implies that Hamdi took up arms against Coalition troops in Afghanistan. Instead, presenting Hamdi as a detained US citizen or simply as a citizen excludes the very negative connotations of enemy combatant. There is no mention of combat or war; there is no implication that Hamdi fought US troops. As a detainee, he is not some sort of strange, frightening enemy: he is a citizen, just like you, or your neighbor. The article’s rhetoric, in addition to the fact that

⁷⁹ Brooke A. Masters, “Access to Lawyer Ordered for Detainee; Judge Rules on U.S.-Born Man Captured in Afghanistan and Held in Norfolk,” *The Washington Post*, May 30, 2002, Final Edition: A07.

⁸⁰ For example, see: John Mintz, “Detainee Moved from Cuba to Va. Brig; Officials Saw Man Is Likely U.S. Citizen,” *The Washington Post*, April 6, 2002: A08. Or: Bruce Fein, “Judicial Squinting During War,” *The Washington Times*, June 14 2003: A15.

many quotes from Hamdi's supporters are highlighted, speak to the article's relatively positive portrayal of Hamdi.

Frank Dunham, Hamdi's attorney, figures prominently in this article, and, unsurprisingly, in many others. He is the first actor quoted in the article and more of the article is devoted to Dunham than to the Department of Justice. Dunham's quotes make up four full sentences, while the Justice Department is given one line only. Compared with the quote from the Justice Department, Dunham's quotes are simply more interesting and evocative. The Justice Department's quote reads like a bland press release, which it very well could have been. When a reader recalls Hamdi's case, they will be more likely to remember Dunham's comments because they are more interesting, and there are simply more of them. Since certain issues in this article have been given saliency over others (namely that the threat to the rights of American citizens is more dangerous than the threat of national security), the public will be more likely to view later articles based on the criteria of rights as opposed to the criteria of homeland security.

The majority of the articles from 2002 and 2003, much like the highlighted article, choose to present the case as an issue of civil rights and Executive power rather than as an issue of national security. The rights-talk issue frame ultimately helps Hamdi's case because it is less sensationalist or emotional as compared to alternatives. Framing the case as a national security issue would, unsurprisingly, be detrimental to Hamdi and his case, at least in the public eye. As in the case of the use of the rhetoric of "enemy combatant," a national security frame would portray Hamdi as the enemy. The government's policy to leave Hamdi in a legal gray area could be perceived as its attempt to protect the public, possibly increasing the policy's standing with the public. However, by framing the issue as one of rights or the boundaries of the Executive, the

media ignores whatever national security threat (if any) Hamdi and those like him would pose to the United States.

Like the article just discussed, many of the articles from these first two years also speak with law professors about Hamdi and his unique place in history. These law professors and the quotes selected provide a legitimating voice to the media's rights-talk frame. When a law professor, rather than simply a journalist, frames Hamdi's case as a rights issue, it adds a certain weight to the frame; in a sense, the frame becomes more believable. The frame seems more credible because, unlike journalists, legal professionals are trained to evaluate and judge laws and policies: if their quotes support the media's issue frame, that agreement ultimately makes the frame more legitimate.

Professor Ira Robbins' quote in the article referred to above provides a good example of the legitimating function of legal professionals. The public may not have thought about the right to an attorney as such an important and "absolute" right, but Robbins points out that the right to an attorney is the gateway to other rights—without access to a lawyer, a citizen cannot navigate the proper legal channels to ensure the protection of other rights. With reference to Hamdi's case, the right to a lawyer is presented here as arguably the most fundamental right because without it, there is no way to challenge the government regarding the restriction of other rights. Again, Robbins' quote helps to present the case as an issue pertaining to a citizen's most basic and trusted rights. Other law professors are quoted in the articles and they similarly help to drive the discussion of the case in certain directions because they lend a legitimating voice to the debate between individual rights and national security.

More specifically, many of the law professors quoted in articles relating to Hamdi present the case as a challenge to Executive authority. Often, the law professors quoted throughout 2002

and 2003 state that the Executive has overstepped its bounds with regards to Hamdi. David Cole of Georgetown Law School regarded the government's response to Hamdi as "an astounding assertion of authority."⁸¹ Cole states that if a citizen cannot even get a hearing, it follows that there is no limit to the President's authority. American University professor Richard Semiatin stated that if the Executive goes too far, "the courts will stop them."⁸² Daniel Kanstroom of Boston College Law School was quoted as saying that the administration's position was "unprecedented."⁸³ Quotes like these will prime the readers to view the *Hamdi* case with regards to the boundaries of Executive power. Instead of framing the case as one of national security or homeland defense, the quotes help to frame the issue as one of Executive power. Again, this is a much more reasoned and unemotional frame. As time passes, this frame will become more and more prevalent until late 2004 when the case is presented as President Bush vs. Yaser Esam Hamdi.

One theme not addressed by these particular articles is the agreement between "conservative" and "liberal" news media. While it may not be surprising to see a *Washington Post* article which positively frames the case for Hamdi, it is much more surprising to come across an article from *The Washington Times*, one of the more conservative papers in the US,⁸⁴ that frames the case in this manner. Throughout 2002 and 2003, many opinion pieces from *The Washington Times* openly questioned the actions of the government, and continually framed

⁸¹ Tom Jackman and Dan Egge, "'Combatants' Lack Rights, US Argues; Brief Defends Detainees' Treatment," *The Washington Post*, June 20 2002: A01.

⁸² Chris Mondics, "Bending Some Rules to Break the Enemy's Grip," *The Philadelphia Inquirer*, June 16, 2002: C01.

⁸³ Seth Stern, "Pressure Up to Balance Rights and Security in Terror War," *The Christian Science Monitor*, August 16 2002: 2.

⁸⁴ Chinni, "The Other Paper: The Washington Times's role," 2002. 12 Nov 2008. <<http://http://ejrarchives.org/issues/2002/5/wash-chinni.asp>>.

Hamdi's case as an issue of rights.⁸⁵ Interestingly, *The Washington Times* was actually one of the first newspapers to explicitly frame Hamdi's potentially unlawful detention as a Bush Administration policy as opposed to a policy of the US government or of the US Department of Justice.⁸⁶

The articles I have discussed above show that both "conservative" and "liberal" media outlets tended to frame the issue in the same way, which could have had an even greater effect on public opinion. It becomes much harder to simply write-off a media frame if it comes from media outlets on the left and the right: issue framing from both conservative and liberal media helped to legitimize the frame of individual rights insofar as it became elevated above simple partisan politics. To be sure, articles from *The Washington Times* are going to have a conservative slant just as much as articles from *The Washington Post* are going to have a center-left slant (the *Times* tends to prefer using "enemy combatant" while the *Post* uses "detainee"); however, the *Times* still includes these alternative frames. This inclusion has the ability to impress upon the public that this case can be viewed the same way from different political perspectives. As 2003 became 2004, framing Hamdi's case as a challenge to Bush Administration policy became increasingly popular.

Media Coverage (2004):

There is not a noticeable shift in the frames and rhetoric of the media coverage in 2004: rights and Executive authority remain the dominant themes of the articles and Hamdi is still

⁸⁵ Nat Hentoff, "The Challenge to Liberty; In Wake of September 11, Americans Must Defend Freedoms," *The Washington Times*, September 9 2002: A19.

⁸⁶ Nat Hentoff, "Bush's Personal Rule of Law; Suspending Habeas Corpus is a Dangerous Act," *The Washington Times*, August 18 2003: A15.

referred to as a “detainee” as often, if not more so, than as an “enemy combatant.”⁸⁷ One of the more interesting trends (mentioned only briefly earlier) is the shift of the case’s actors. In 2002 and 2003, most articles framed the case as the US government or the Department of Justice versus Hamdi. By late 2003 and 2004 the articles increasingly present the case as the Bush Administration versus Hamdi. Interestingly, this change occurs as Bush’s approval ratings began their slow decline.⁸⁸ I would not argue that the media’s coverage of Hamdi in 2002 and 2003 had an effect on President Bush’s approval ratings, but it is important to note that, over time, the media began linking the Hamdi case to an increasingly unpopular President rather than the more neutral and anonymous legal bureaucracy that is the Department of Justice.

This new association could have created a link in the public’s mind between *Hamdi v. Rumsfeld* and President Bush. As popular opinion of President Bush slowly declined, this frame could have helped Hamdi and his case: as the public’s approval of Bush’s performance dropped, the public’s approval of Bush Administration policy initiatives would likely drop as well. Where Hamdi’s status is framed in the media as the result of a Bush Administration policy, public support for his detention would likely suffer a decline as well. Mere references to President Bush were capable of decreasing the legitimacy of government policy regarding terrorism. Proceedings in response to the novel threat of terror were not framed as the work of the White House or even of the Presidency, but of Bush himself. The policy shifted its frame from one of an institutional decision made by faceless bureaucrats to that of Bush’s decision—a more personal decision instead of a measured government policy. Many of the articles covering the

⁸⁷ For example, see: Stephen Henderson, “Court to Rule on Terror Detainee; High Court to Rule in ‘Combatant’ Case,” *The Philadelphia Inquirer*, January 10 2004: A01. Or: Warren Richey, “Detainee Cases Hit Court,” *The Christian Science Monitor*, January 23 2004: 01.

⁸⁸ “Bush: Job Ratings,” [Polling Report](http://pollingreport.com/bushjob1.htm), 12 Nov. 2008 <<http://pollingreport.com/bushjob1.htm>>.

Supreme Court's decision in *Hamdi v. Rumsfeld* reference the case as a victory over Bush and his policies.

The volume of coverage in 2004 does not reveal any unexpected spikes. The major spikes in media coverage correlate to three major events: the day the case was chosen by the Court, the day of oral arguments and the day the Court decided the case (see Appendix B). There are also two smaller spikes in late 2004: one when the Department of Justice decided to release and deport Hamdi, and then another when he was actually deported. As expected, when there was new information about the case to report, the number of articles spiked. To analyze the media coverage of the case from 2004, I will focus on these spikes for two reasons. First, most of the articles from 2004 have the same frames and rhetoric that have already been detailed in the analysis of 2002-2003. Secondly, these spikes represent the news articles that likely reached the largest portion of the public. Of these spikes, the two largest – the days of April 28th and June 29th – include the most interesting and relevant content.

The majority of the news articles from April 28th and 29th describe the oral arguments heard before the Court, and include the Supreme Court Justices' quotes and questions from the case. Much like the law professors, the quotes from the Justices include significant cues to the public, which they can utilize when prompted to recall facts about the case. Justice Scalia was quoted in a *Newsweek* article saying the President's power to wage war is the power to command armies in battles, not "the power to do whatever it takes..."⁸⁹ Other comments by the Justices from the oral arguments included in these articles are similar to this quote: the articles only include questions or quotes that criticize the government's position.

⁸⁹ Michael Isikoff and Mark Hosenball, "Terror Watch: Powers of the President," *Newsweek*, April 28, 2004.

For the most part, the journalists have chosen the Justice's comments that most support Hamdi's case. By selecting only those questions or quotes that criticize the government's case, the articles frame the petitioner's case as the more legitimate one. This frame makes it appear as if the Justices questioned the lawyers from each side in a very lopsided manner. Highlighting the interrogation of the Solicitor General creates the illusion that the Justices only took issue with the government's argument, and had little to no complaints regarding Hamdi's side of the case. This particular frame suggests the unsatisfactory nature of the government's argument. In addition to presenting the petitioner's case as more legitimate, the quotes from the Justices mostly concern issues of rights and Executive power. These comments further legitimize the issue frame which was created by the law professors in 2002 and 2003, as I described earlier.

One article that is an exception to this trend includes not only questions to both the petitioner and respondent,⁹⁰ but also quotes from the Solicitor General that present the issue as predominantly one of national security. During the case, Justice Scalia questioned Dunham (Hamdi's representative): "You want to run down the members of the Afghan allies who captured this man and get them to testify in a proceeding?"⁹¹ Scalia brings up an interesting point that is ignored by the media both on this day and in the general coverage of Hamdi's fight for a fair trial. The article notes that the "swing justices" (Justice O'Connor and Justice Kennedy) and the more conservative justices "came down hard on the detainees' attorneys;"⁹² the article ends with a series of tough questions posed to Dunham. However, this article was still the exception rather than the rule. The most important fact to glean from this article is that the Court's

⁹⁰ Stephen Hederson, "Legal War: From the Brig to High Court; Justices Heard Pleas on Behalf of US Citizens Held in the Terror Fight," *The Philadelphia Inquirer* April 29, 2004: A01.

⁹¹ Henderson, A01.

⁹² Henderson, A01.

questioning was balanced, but the media has clearly ignored this balance in its coverage. An alternative frame existed but was not utilized.

Once the oral arguments were over, there was a lull in the coverage of *Hamdi v. Rumsfeld* until June 28th when the Court handed down its decision, granting Yaser Esam Hamdi his due process rights. The coverage of the Court's decision was trumpeted as a triumph of the ideals and rights of our nation over the policy of President Bush—instead of the Court pushing back against the Executive, the case was framed as a victory of the nation over the policy of an increasingly unpopular president. The tone of the media was almost jubilant—it seemed that normalcy had finally returned and the illegal and dangerous policies of one man had finally been rejected.

An editorial from the St. Petersburg Times typifies this attitude. The article is titled “Protecting Our Ideals,” and frames the decision as a triumph of our ideals through its use of quotes: “It is during our most challenging and uncertain moments that our nation's commitment to due process is most severely tested; and it is in those times that we must preserve our commitment at home to the principles for which we fight abroad,” wrote Justice O'Connor in the majority opinion—a quote which is present in seven different articles or editorials about the decision.⁹³ Using a phrase like “our ideals” and employing quotes such as Justice O'Connor's make the issue seem much more personal. Such language is a more sensationalist way to refer to the case, and it is the first time that such imagery and rhetoric is seen consistently across many different articles: this rhetoric calls upon the language of the Fifth Amendment and the rights it guarantees – such fundamental things as life, liberty, and the pursuit of happiness. Justice

⁹³ Charlie Savage, “Rulings Afford Detainees Their Day in Court,” *The Boston Globe*, June 29 2004: A1.

O'Connor's words seem to present the issue as a test of strength for our country. While a lesser nation may have folded under the pressure of terrorism, Justice O'Connor reminds us that our beacon of democracy and civil liberties must shine bright: we must protect those principles at home for which we fight abroad. At this time, the media's attempt to stir the emotions of the public, regarding the nation's need to revert back to what is just and right, is evident: the decision in Hamdi's case represents a return to form for our nation.

Many other articles contain similar themes. Although they are much less sensationalist than the article mentioned above, they still present the issue as a return to normalcy for the nation. While the limits to Executive power were temporarily expanded and the rights of citizens were temporarily restricted, many of the articles and the legal professionals they quote remind us that the decision represents a return to form. Harold Koh, the dean of Yale Law School presents the decision as a constraint of Executive power that forced the Bush Administration to submit to some degree of judicial oversight.⁹⁴ The director of the US Law and Security Program at Human Rights First referred to the decision as "a sweeping victory for the rule of law."⁹⁵ Again, these professionals frame the decision as the Court pushing back against an unpopular president. The Court is fixing Bush's wrongs and reminding the government that we are a nation of laws and rights, laws and rights that have been integral and fundamental to our government for over two hundred years.

Significantly, the articles do not present the decision as a departure from current policy, but rather as a reversion to the nation's long-standing principles and ideals.⁹⁶ The Court reminds us that in the United States, "no prisoner is ever beneath the law's regard, and no president above

⁹⁴ "Too Far, Say the Justices; The Supreme Court and Enemy Combatants," *The Economist*, July 3, 2004.

⁹⁵ Warren Richey, "Terror Detainees Win Right to Sue," *Christian Science Monitor* June 29, 2004: 01.

⁹⁶ "Supreme Rebuke," *The Washington Post*, June 29, 2004: A22.

its limits.”⁹⁷ Simply because we are at war does not mean that the President has “a blank check” when it comes to “the rights of the nation’s citizens.”⁹⁸ In framing the decision as a reversion to basic principles and ideas, the media has presented the decision as consistent with our nation’s history. The decision is more palatable to the public—it will be viewed with less suspicion than if it were presented as a dangerous and potentially costly shift from the current policy. The three general frames of the decision—the emotion, the rebuke of an already unpopular president and the return to normalcy—ultimately frame the Supreme Court’s decision in the most positive way. These specific media frames left little room for popular dissent with the Court’s ruling.

Conclusion:

The fascinating and complex relationship between the Court, the public, and the media has been the subject of much research and analysis over the years. The Supreme Court needs to derive its power from public opinion because it does not have the sword of the Executive or the purse of the Legislature. The Court must present itself as a legitimate, impartial body to acquire the public support it needs to hold power in Washington. Generally the justices themselves do not speak directly to the public; and the Court’s information officers, by their own admission, present only the facts without any sort of spin. Since the Court does not hold press conferences or attempt to dictate issue frames in the same ways that the other branches do, the media can frame the issues without any guidance from the Court.

Issue frames, priming and saliency can have substantial effects on public opinion as many studies have demonstrated. The public can be primed to view issues in a certain way based on the facts that are presented; the larger narrative can influence public opinion either negatively

⁹⁷ Todd S. Purdum, “In Classic Check and Balance, Court Shows Bush It Also Has Wartime Powers,” *The New York Times*, June 29, 2004: A17.

⁹⁸ Joan Bikuspic and Toni Loey, “Court Curbs Terror Policies,” *USA Today*, June 29, 2004: 1A.

or positively. Issue frames that negatively affect public opinion could also affect the public's opinion of the Court, and influence the reception of a given decision. It is useful, then, to analyze how the media has framed certain cases to examine how these cases have been presented, and to understand how the media presented the case's actors, in order to theorize how those frames affected public opinion.

In most of its coverage, the media ignored the more emotional or sensationalistic frames that it could have used. The media, instead, framed Yaser Esam Hamdi's struggle for his Fifth Amendment rights as the struggle of one citizen's request for the rights that most citizens take for granted on a daily basis. The public was primed to view the issue as one of rights-talk and the limitations of Executive power rather than as an issue of national security: further, the media's rhetoric supported this particular issue frame. Hamdi is referred to as "detainee" or "US citizen" as often as he is referred to as an "enemy combatant:" the media did not stress the danger that Hamdi and men like him could pose to the United States. There are virtually no references that could associate Hamdi with 9/11, terrorists or networks like al-Qaeda. Instead, Hamdi's case is presented as a struggle for his due process rights.

I would not argue that the media was trying to motivate the public to express outrage or concern over Hamdi's unlawful detention. The case was not framed to rally the public in defense of Hamdi's civil rights; despite the media's powerful issue frames, some of the basic facts of the case could trigger the public's inherent biases. Hamdi was captured on the battlefield and was accused of being a member of the Taliban. And yet, instead of creating a rallying point for those displeased with the Bush Administration, the media's framing of the case served to temper popular emotions by presenting the issue in a more dispassionate way rather than dredging up dormant emotions from 9/11.

As a result of the more neutral rights-talk frame employed by the media, the public was primed to view the case as an issue of civil rights and Executive power rather than as an issue of national security. The media's priming most likely hurt the government's case against Hamdi because the public came to view the case as a rights issue, rather than the way the government was trying to present the case—as a national security issue. Progressively more over time, the public was also primed to view the case as a victory over the increasingly unpopular Bush Administration and President Bush himself. It seems natural that, once the decision was handed down and the frame was realized, there would be a quasi-jubilant response – *finally*, after three years, Hamdi's rights were recognized and President Bush's unlawful policy was definitively rejected. It did not matter that he was an "enemy combatant" or that he was accused of being a member of the Taliban. Hamdi's odyssey through the American legal system finally ended in success, and the Court's decision demonstrably helped to restore a sense of order to the nation.

We must wonder, though, if Constitutional law dictated the way in which the case was framed. Did the media have the ability to frame this case or was it simply following the frame already put in place by the law? In this case, the media did use the frame that was supported by Constitutional Law, but that is not always the case. Two counter-examples can be found in the media's coverage of *Liebeck v. McDonald's Restaurants*, CV-93-02419, 1995 WL 360309 (N.M. Dist. Aug. 18, 1994), and *Bush v. Gore*, 531 U.S. 98 (2000). Stella Liebeck, a seventy-nine year old woman, was scalded by a cup of McDonald's coffee and proceeded to win a multi-million dollar lawsuit against the corporation. The media presented the jury's decision as evidence of America's runaway system of law—look how much money this woman got for a little burn! The media ignored many of the facts that came out during the trial; for instance, McDonald's kept its coffee so hot that it could produce third degree burns in less than seven

seconds.⁹⁹ The media chose, instead, to focus on the large settlement, positing it as a ridiculous sum of money for a little burn from some hot coffee. The media's framing certainly did not follow any "legal" frame: a legal frame would have discussed the facts of the case and the rational way that the settlement amount was reached.¹⁰⁰ The legal frame would have presented the *Liebeck* decision as completely rational rather than evidence of a runaway justice system.

Similarly, *Bush v. Gore* saw the media employ two competing frames. One frame presented the case as a legitimate Constitutional decision; the other presented the case as simple partisan politics – that is, that all the Republicans voted to stop the recount and all the Democrats voted to continue it.¹⁰¹ The fact that these two different frames existed demonstrates the fact that the media does not always choose to follow the legal frame. Most legal professionals would probably describe this case as an example of partisan politics invading the Court: that frame did exist in the media, but so did the alternative. Conclusively, the media does possess a significant amount of political power and that power endows the media with a large amount of influence over the public. Ultimately, the media can choose the subject matter and the ways in which it wants to report on any given subject: the media has the capacity to present the facts in a variety of ways, and thus influence the public in vastly different manners.

Lastly, we are left to ponder why Hamdi's case matters. First, it represents one of the first times the Court restricted Executive authority during wartime: the Court's action in this case represents the exception rather than the rule. This case is also noteworthy because the public

⁹⁹ William Haltom and Michael McCann, *Distorting the Law: Politics, Media, and the Litigation Crisis*, (New York: University of Chicago P, 2004), 189.

¹⁰⁰ Liebeck's legal counsel did not simply pull a number out of the air. The settlement was based on the amount of money that McDonald's makes in coffee sales each day. They took that amount and doubled it, which amounted to \$2.7 million (Haltom and McCann, 191).

¹⁰¹ Nicholson and Howard, "Framing Support for the Supreme Court in the Aftermath of 'Bush v. Gore.'"

seemed to accept the decision so quickly. There were no large-scale protests in Washington—frantic talking-heads did not dominate the airwaves decrying the loss of the War on Terror—because the public was *primed* to accept the decision starting in 2002. The public was primed to see this case as a US citizen fighting for his right to a trial, so when that right was realized, it became logical not to see any dissent or panic. Had the Court handed down a different decision, one that was not in keeping with the media's frame and priming, perhaps then the decision would have elicited a different response from the public – maybe then the Court would have had to dip into its reservoir of goodwill to counteract the public's outrage at the decision. In the end, though, the accidental American who presented the first challenge to the US government's policies in the War on Terror was deported to Saudi Arabia and the public barely seemed to register it.

Appendix A:

Access to Lawyer Ordered for Detainee;

Judge Rules on U.S.-Born Man Captured in Afghanistan and Held in Norfolk

An American-born man captured with Taliban fighters and being held without charges in a Navy brig in Norfolk must be allowed to meet privately with a lawyer, a federal judge ruled yesterday, although he gave the Justice Department until Saturday to appeal his decision.

Yaser Esam Hamdi, 21, who was raised in Saudi Arabia, was captured in Afghanistan and sent initially to Guantanamo Bay. But the Department of Defense transferred him to the brig at the Norfolk Naval Station in April after learning that he was born in Louisiana.

Government lawyers contend that Hamdi, who dropped out of a Saudi university, is an unlawful enemy combatant who can be held indefinitely without being charged or given a lawyer. They told U.S. District Judge Robert G. Doumar that keeping Hamdi isolated while he is interrogated is vital to efforts to protect national security and learn more about the al Qaeda terrorist network.

But Federal Public Defender Frank W. Dunham Jr. filed suit May 10, demanding that the government either charge Hamdi with a crime or let him go. After he was formally appointed to represent the detainee, Dunham also asked for access to his new client.

"How do you represent somebody when you can't talk to the client?" he said. "You don't really have a lawyer if you can't talk to him."

Dunham added: "To me this is scary stuff. This guy is a U.S. citizen and according to the government he can be held for life without ever seeing a judge or a lawyer."

Doumar, presiding in Norfolk, agreed that the Constitution guarantees Hamdi the right to consult a lawyer, and he gave government lawyers until June 13 to explain in writing why Hamdi is being held without charges.

It's not clear what the solicitor general's office, which argued the case, will do next. "We're reviewing the decision and have not made a decision on an appeal," said Justice Department spokesman Bryan Sierra.

Doumar scheduled a hearing for June 20, which would make Hamdi the first -- and perhaps the only -- detainee to get a day in court to argue that he is being unfairly held. A federal court in Los Angeles rejected an earlier suit filed on behalf of the detainees, saying it did not have jurisdiction over foreigners being held in Cuba.

But the Norfolk naval base is clearly part of Doumar's domain, and Hamdi's claim on the courts would be even stronger if he does turn out to hold U.S. citizenship by virtue of his birth in Baton Rouge.

Legal analysts said government lawyers would have trouble finding a judge willing to deny Hamdi access to a lawyer.

"Very few rights are absolute. However, the right to a lawyer is seen as one of the most important because you need a lawyer to assert your other rights," said American University law professor Ira P. Robbins.

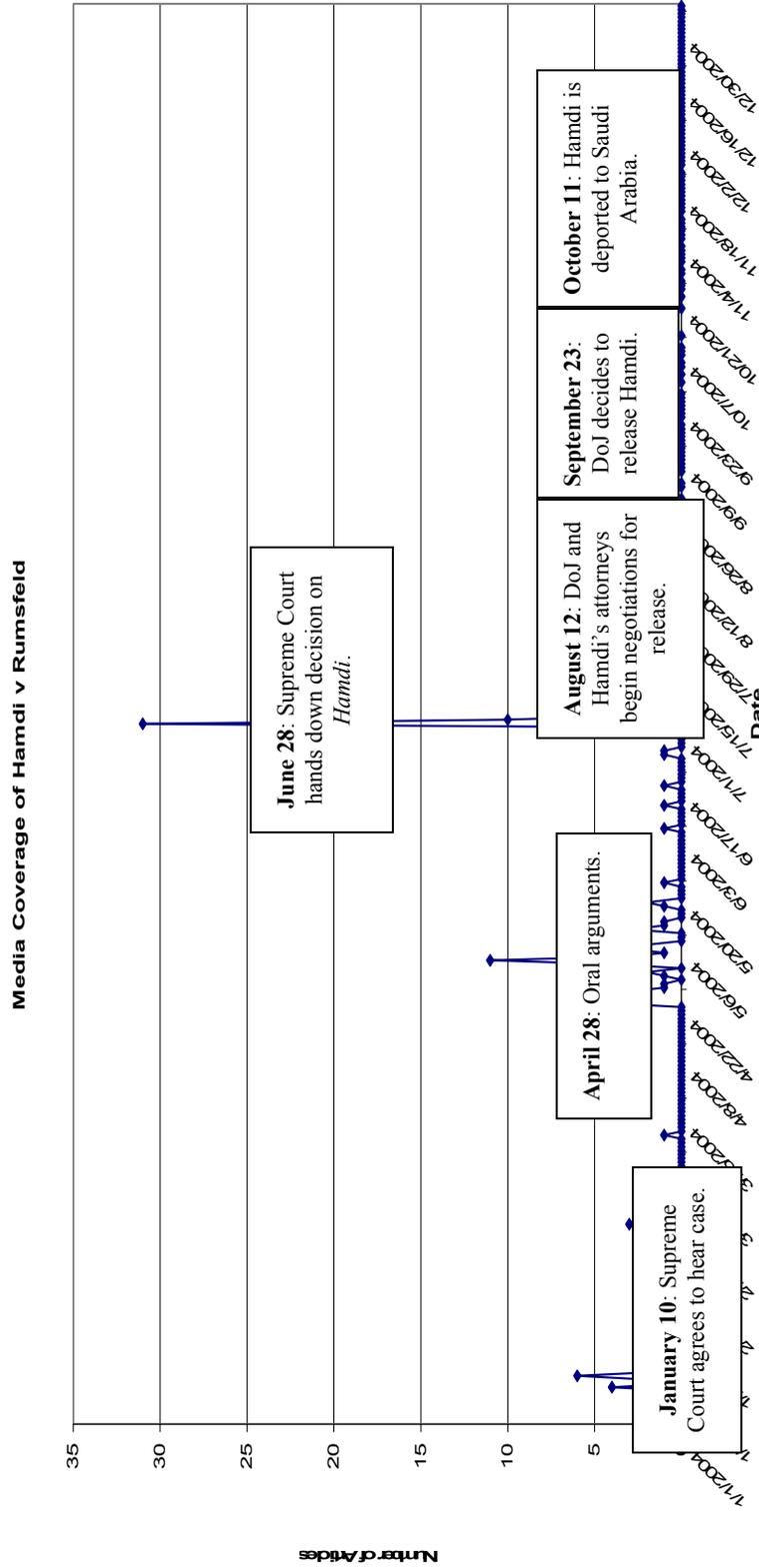
Although some have argued that Civil War-era prison camps provide legal precedent for holding Hamdi without charges or a lawyer, others point out that the situations are quite different. The historical example involved thousands of citizens in armed rebellion against their

government, and President Abraham Lincoln had formally suspended some legal rights. But Hamdi is just one of two people in the current situation who might be U.S. citizens.

"The longer the detention, the less sympathy the government is going to find for this enemy combatant argument," said Hofstra University law professor Peter J. Spiro. "In some ways, [government officials] probably wish they had never picked this guy up."

Hamdi's case may have repercussions for the other American-born man captured in Afghanistan. Attorneys for John Walker Lindh asked this week for access to Hamdi because they believe that Hamdi has evidence that would help their client defend himself against charges of conspiring to kill Americans abroad and aiding foreign terrorist groups.

The judge in that case, T.S. Ellis III, said Tuesday that he was inclined to order the government to give Lindh's team access to Hamdi.



Appendix B: