

Senator Obama on Guantanamo and Nuremberg

*John Q. Barrett**

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In *Boumediene v. Bush*,¹ the Supreme Court of the United States on June 12, 2008, declared unconstitutional a U.S. law that barred non-citizens who are being detained by the U.S. at Guantanamo Bay, Cuba, as enemy combatants from challenging the legality of their detentions by seeking writs of habeas corpus in federal court.

Senator Barack Obama promptly issued a statement endorsing the *Boumediene* decision.² The next day, responding to an audience question in Wayne, Pennsylvania (Justice Robert H. Jackson's home state), Senator Obama expanded a bit on his support for the decision. He connected the particular subject of *Boumediene* (the U.S. Constitution's limit on the government's power to suspend habeas corpus) to the commitment to core aspects of due process of law—public trial on criminal charges before a genuine court—that the United States, led by Justice Jackson, insisted upon for captured Nazi leaders following World War II and then brought about at Nuremberg, Germany.

In his comment in Wayne, PA, Senator Obama spoke about the “principle of habeas corpus, that a state can't just hold you for any reason without charging you and without giving you any kind of due process—that's the essence of who we are.” He continued:

I mean, you remember during the Nuremberg trials, part of what made us different was even after these Nazis had performed atrocities that no one had ever seen before, we still gave them a day in court. And that taught the entire world about who we are but also

* Professor of Law, St. John's University School of Law, New York City, and Elizabeth S. Lenna Fellow, Robert H. Jackson Center, Jamestown, New York (www.roberthjackson.org). I posted an earlier version of this text to my Jackson email list on June 16, 2008.

For a selected archive of Jackson List postings, see my homepage at www.law.stjohns.edu. To subscribe to the Jackson List, which does not display recipient identities or distribute their email addresses, send a note to barrettj@stjohns.edu.

¹ No. 06-1195, together with *Al Odah v. United States*, No. 06-1196, 553 U.S. ___, 2008 U.S. LEXIS 4887, 2008 WL 2369628, <http://www.supremecourtus.gov/opinions/07pdf/06-1195.pdf>.

² <http://my.barackobama.com/page/community/post/samgrahamfelsen/gG5Gz5>.

the basic principles of rule of law. Now the Supreme Court upheld that principle yesterday.³

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I pass this nugget along because I agree with Senator Obama's understanding of Nuremberg and its commitment to law, and because I found interesting the very general connection that he drew from there to *Boumediene*.

I also send this note to give the *Boumediene* decision link, at the Supreme Court website, to Jackson List subscribers who might not find it easily. I hope that those of you, especially non-lawyers, non-native English speakers and non-U.S. residents, who have written to me about such concerns find the link helpful.

If you read the lengthy opinions in *Boumediene* (especially Justice Kennedy's opinion for the Court and Justice Scalia's dissenting opinion), you will see a deep divide about the meaning of a June 1950 Supreme Court decision, *Johnson v. Eisentrager*, in which Justice Jackson wrote for the Court's majority. I expect to post soon about this subject.

³ Jake Tapper, *Kaffee vs. Jessup II?: Obama and McCain Square Off on Habeas Corpus Rights for Accused Terrorists*, <http://blogs.abcnews.com/politicalpunch/2008/06/kaffee-vs-jessu.html> (June 14, 2008, blog post by ABC News' Senior National Correspondent); accord Thomas Fitzgerald, *In Pa., Obama Promises to Cut U.S. Reliance on Oil*, PHILA. INQUIRER, June 15, 2008.