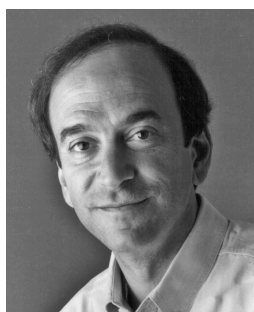




## FACULTY COMMENTARY

# Court Session Ends With Important Rulings



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As in past years, the United States Supreme Court ended its term this year with several blockbuster rulings, and once again with some surprises.

A year ago, the court ended its session with

three major decisions: striking down the Texas sodomy statute in *Lawrence v. Texas* on due process grounds, ruling in favor of the constitutionality of the affirmative action admission program at the University of Michigan School of Law, and finding – in contrast – that Michigan's undergraduate admissions policies violated equal protection.

This year, the court's most dramatic decisions rejected President Bush's arguments that the executive branch could detain indefinitely suspected terrorists and enemy combatants at Guantanamo Bay and here in the United States without any constitutional due process protections.

The court ruled in *Hamdi v. Rumsfeld* and *Rasul v. Bush* that the detainees were entitled to minimum procedural safeguards – including the right to legal counsel – that would allow the detainees a fair opportunity to challenge the grounds for their detention before a neutral decisionmaker. In her opinion for a plurality of justices in the *Hamdi* case, Justice Sandra Day O'Connor stressed that the president, even when acting as commander-in-chief during time of war, is subject to oversight by the other two branches of government – the federal judiciary and Congress. She further said "state of war is not a blank check for the President."

In *Rasul*, the court similarly ruled that the federal courts had jurisdiction to review Guantanamo Bay detainees' claims that they were innocent of any wrongdoing and should be freed.

The drama of the court's decisions

was punctuated by the lop-sided votes in both *Hamdi* and *Rasul*.

In *Hamdi*, the administration lost 8-1, as several of the court's more conservative members, including Chief Justice William Rehnquist and justices O'Connor, Antonin Scalia and Anthony Kennedy, joined more liberal justices John Paul Stevens, David Souter, Ruth Bader Ginsburg and Stephen Breyer in rejecting the president's legal arguments. In *Rasul*, the federal government failed to attract the votes of either justices O'Connor or Kennedy and lost 6-3.

The three detention cases were among the roughly 80 decisions the court announced during its session, which commenced in October and adjourned at the end of last month. Eighty is about the same number of cases that the court has decided every year since the early 1990s, when it effectively halved its decided cases from 160.

While the cases that tend to attract the headlines are often those over

and not the jury.

The latter ruling, according to O'Connor's dissenting opinion, will have a "disastrous impact" on current federal and state sentencing practices, and thus potentially calls into question the legality of thousands of pending criminal prosecutions. Indeed, O'Connor was so concerned about the court's ruling that she announced her dissent in open court – a rare practice, especially for O'Connor.

Although O'Connor dissented in *Blakely*, she continued in her remarkable role as one of the single most influential justices on the court. This year, as in recent years, she has been the justice most likely to cast the deciding vote. No other justice was in the majority more often than O'Connor, including in the court's most significant cases. Nor were any other justices more often in the majority in the court's 5-4 decisions.

O'Connor was, when nominated to the High Court, immediately historically significant because she was the first female justice. She has now been on the court for 24 years and, year after year, her influence increases, not because of her gender, but because of her distinct judicial voice and increasing seniority on the bench.

Any discussion of the other significant Supreme Court rulings this year would have to include the court's decisions related to the Pledge of Allegiance and campaign finance reform.

In *Elk Grove Unified School District v. Michael Newdow*, the court ultimately declined to rule on the constitutionality of a local school district's policy of requiring public elementary schools to lead willing students in the recitation of the Pledge of Allegiance (including "One nation, under God").

In *McConnell v. Federal Election Commission*, the court largely sustained the McCain-Feingold campaign finance reform law, recently enacted by Congress, against a barrage of First Amendment challenges.

The court has already granted more than 30 cases to be heard next term, starting October 2004. If the past is prologue, they will undoubtedly lead to more blockbuster rulings, and some surprises, next June.

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which the individual justices are most closely divided, the court decided about half of its cases with either all nine or at least eight members of the court in agreement.

Just under one-fourth of the cases were decided by the narrowest of margins, five to four. And, not surprisingly, they included some of the highest profile cases, including the court's First Amendment decision in *Ashcroft v. ACLU*, to enjoin preliminarily the Child Online Protection Act, designed to restrict children's access to pornography on the Internet; and the court's ruling in *Blakely v. Washington*, holding that the Sixth Amendment bars judges from increasing a criminal defendant's sentence beyond a statutory maximum based on facts found by the jury alone