

## **Linking *Amistad* and Guantanamo a Learned Man's Voice from the Past: John Quincy Adams's Response to Civil Liberties Violations at Guantanamo**

**Renee Ann Pistone, JD LLM, MBA, D.LITT.**

Lecturer

Kean University

1000 Morris Avenue

Union, NJ 07083, USA.

### **Abstract**

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*We can use the arguments from past political figures that are considered to be legendary legal minds in order to explain modern political themes. Past arguments that center around freedom and the preservation of individual civil liberties are actually timeless and necessary to remind democratic citizens that they must keep a watchful eye on government and make sure that absolute power is always checked by a system of government.*

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**Key words:** Civil Liberties, power, legal arguments

### **Introduction**

John Quincy Adams gave a speech (his oral argument) to the United States Supreme Court on February 24, 1841 during the *Amistad* case. According to Jones, the facts of the *Amistad* case are as follows: During a slave uprising, mutiny ensued, and African slaves took command of the ship called *Amistad* and the fifty-three slaves aboard sailed to Long Island, New York. While docked in New York, the slaves approached Green and Fordham (two sea captains) offering them gold if they helped the Africans sail to Africa but Lieutenant Thomas Gedney of the U.S. Coast Guard ship the *Washington* disrupted their plans. Meyers noted, the *Amistad* was headed for Cuba in direct contravention of the 1817 treaty between England and Spain that prohibited the importation of slaves to Spanish colonies. Corrupt slave traders used falsified passports and nighttime landings to avoid British patrol ships. The *Amistad* was towed to Connecticut and the U.S. Attorney of Connecticut ordered a judicial hearing and the three main issues were: (1) if crimes were committed, (2) if they had jurisdiction to hear the case, and (3) if Lt. Gedney and his crew were entitled to \$40,000 worth of the *Amistad's* salvage. The Historian Karen Zeinhart asserted that Spain demanded that the *Amistad* be returned to Cuba along with its subjects (the slaves).

The trial quickly became a tool for abolitionists because the court felt that the central issues were whether the Africans were property and whether anybody owned them. President Martin Van Buren was eager to please the Spanish Queen and comply with her directive but he had to wait until the Africans were tried in court. According to Legal commentator Iyunolu Osagie, on January 13, 1840, Judge Johnson ruled the *Amistad* captives were born free and therefore kidnapped in violation of international law. Pressured by the President, the government unsuccessfully appealed to the Circuit Court and then finally to the U.S. Supreme Court. Abolitionists groups feared the decision might be overturned and they lobbied John Quincy Adams to help out with the Africans' defense. John Quincy Adams' speech (his oral argument) is summarized below to illustrate this man's vision of Presidential power and his crusade to uphold individual rights and freedoms. Adams begins by calling the Court's attention to the fact that his name has been on the rolls as Attorney and Counselor to the Supreme Court for more than thirty-seven years. He explains to them that he never imagined he would be here arguing for the causes of justice, liberty, and life at this point in his old age. This speech has been upheld as a master of American Rhetoric but what was he really getting at? Well, his argument rails against the Spanish Queen, Isabella the Second, and President Martin Van Buren saying that these rulers want to be in control of their courts. For Adams, our unique American government provides for three independent branches of government and the President or rather the Executive branch may not control the Supreme Court, the judicial branch.

### **The argument for freedom within a democratic nation**

The next part of his argument called attention to the individual freedoms and liberties found in the Declaration of Independence. He held a facsimile of the document and asked what should be done with it since it states that all men are equal and have rights.

He symbolically tore it up meaning that if the Court overturned the lower court's ruling (that the African slaves were free) then they were tearing up the Declaration of Independence. Based on this speech, I have identified his voice and have constructed a modern speech that I feel he would give now if he were alive. The problem does not involve slavery but it does involve individual rights and freedoms. I am speaking about our current President's Executive Order that declared people enemy combatants in order to detain them without due process of law (notice and a hearing). Statement About the Modern Issue that John Quincy Adams' Speech Responds To President George W. Bush signed an Executive Order that grants our military unlimited powers to seize people (even American citizens) and hold them in detaining cells, according to political commentator Joseph Margulies. Most of these detention cells are located offshore but they are all on military bases controlled by the U.S. on foreign lands. The military seizes people under the guise that they are suspected terrorists. Currently, in Guantanamo there are people held from Canada, Morocco, and other places around the world. President George W. Bush continues to expand his powers beyond what is written in Article 2 of the United States Constitution. The fact that the Constitution grants the President the title of Commander-in-Chief does not mean that George W. Bush may freely conduct warfare outside the scope of Congressional approval as the Constitution severely limited Executive power. The provisions referring to Executive powers to wage long term warfare are prefaced by the President may do (such and such) but only with the advice and consent of the Senate. Therefore, the Founding Fathers designed the Executive branch to be weaker than Congress, when it came to waging warfare.

### **John Quincy Adams' Imagined Modern Day Speech in Open Court:**

May It Please the Court, ladies and gentleman why are we here? I mean, how is it that a man can be locked away for no definite time period and without a hearing? The government thinks that the lower courts have made a mistake. Did they miss the truth? Do we have eyes clear and bright enough to see the truth, as it stands before us? The truth has been beaten and bruised, taken from court to court, yet it reigns in full glory. It refuses to be cast out of the light. The long powerful arm of the Executive is trying to undermine the role of the truth in this case. The President snubs our courts signing Executive Orders that contravene the separation of powers. President George W. Bush believes that he alone can be the Judge and Jury in these cases and the detention of so-called enemy combatants at Guantanamo and other U.S. bases proves this. These people are being held without hearings and we do not even know what the evidence is based on. Now, ladies and gentlemen, I must say that I differ with George W. Bush speech that the natural state of man is warfare. Freedom is what we all live for and what we cannot live without. Yes, freedom it is the one thing that we all go to the greatest extremes to re-gain, once it is lost, or taken from us and it is the reason why our relatives fled tyranny from the English king and formed a new republic. Who am I speaking about? James Madison, Alexander Hamilton, Benjamin Franklin, Thomas Jefferson,

George Washington, and John Adams to name a few. Why do we ignore your legacies? We should turn to you for advice and that does not mean that we are weak. But we have come to understand that you continue to play a role in our lives since your legacies are far from over. Now, where are the leaders like you when we need them the most? We cannot forget where we came from and how this country got started. What were we afraid of? What are we afraid of now?

President George W. Bush holds the title Commander-in-Chief and it affords him the ability to command militarily. Congress could not pass laws that required all Generals to report directly to it. Constitutionally, Congress declares war and possesses the authority to make decisions about the war. Therefore, it has the ability to reign in the President as his policies continue to expand the war in Iraq. Congress can write laws to guide the conflict and to *check* the President's power. Our President continues to test his expansion of inherent Executive powers which are in his view, still evolving. He takes liberties with his powers because they are largely invented. Often, they fall outside the Constitutional realm leading one to ask, what would George Washington have done? The President's ever increasing expansion of Executive powers raises ethical and legal questions regarding the detainees and his recent firing of eight White House attorneys. When Congress made inquiries into White House policy, he explained that his actions continue to be Constitutional arguing that his position is consistent with the Framers' intent.

He justifies his questionable actions by hiding behind the claim of Executive Privilege and this privilege allows him to conceal facts about White House policy under the rubric that it is confidential and advisory in nature. What about our courts? Will our courts act to stop this rogue President? Surely, it is not in America's best interest for the world to view the United States of America as condoning torture in violation of the Geneva Conventions. Our current White House policy allows: the torturing and prolonged detention of those in Guantanamo and the warrantless search of people's homes on our soil. I implore you to act to stop these abuses before it is too late. This case is before you now to decide a man's fate but you also have the power to decide a nation's fate. Will America hold true to her ideals? Will you act to preserve our democracy with its delicate checks and balances on power or will you validate a dictator? You did not in 1841 and you should not right now. In your deliberations you will consider precedent, the traditions that come before. You can research back to the *Amistad* case and read how the Supreme Court took on the President and the Queen of Spain and won. It is that kind of judicial activism that is desperately needed today as I stand before you. I am a humble man who wants nothing more than to serve my country and I served America here and abroad in various capacities. My love for our country is unmatched and I do not want to see it plunge into inescapable tyranny. I need your help to prevent that from happening. You are a few voices and can come together and act, unlike the Congress that faces so many more voices, each with its agenda to follow. This case is about an Arab man and he is an invisible man.

The Literary Scholar Ralph Ellison wrote about the Invisible Man explaining that the experience of someone who is not a white man is vastly different. The experience is that non-white men are often ignored almost as if they are invisible. Ellison resists this and boldly asserts that the Invisible Man has skin, eyes, and a brain too. I ask this Court to consider just how different we are? We are all made of the same things-each one of us. My client is Ali Saleh Kalah al-Marri, would you please stand up? Al-Marri is a Qatar citizen and he is now held in military custody and he misses his wife and three children. Now, I want to tell you his story. He entered the United States on September 10, 2001 and our government said he is an al-Qaida operative sent here to harm our banking system and he was arrested December 2001. Our government charged him with credit card fraud in the United States District Court of New York and the charges were dismissed for lack of venue. Later on, the government indicted him in the Central District of Illinois on the same charges and after he pled not-guilty, the government moved to dismiss those charges, on the basis that President George W. Bush signed an order declaring him to be an enemy combatant. My client has been held in a military prison in South Carolina since June 2003. He has been held there without criminal charge or process since no evidence was ever presented that he took up arms against the United States. He has been held without proper constitutional protection solely because President George W. Bush believes that his military detention is proper.

Our President has no power to seize him from civilian custody though he may have committed credit card fraud. Members of the Court, here, the evidence will show that my opponent, the U.S. government's attorney, has no evidence for their treatment of my client as an enemy combatant because he is merely a civilian. I filed a habeas petition (hand over the body) to get him released from military custody but it was squashed by the President. Our President cannot eliminate constitutional protections with an Executive Order proclaiming a civilian to be an enemy combatant. There has to be criminal process and procedures followed; therefore, my client must be found guilty first. It is simply unjustifiable to hold people without charges being filed against them. What about the court of public opinion or world opinion, for that matter? Well, we have to concern ourselves with how we appear to the world since we are the ultimate Superpower and other nations look to us for guidance. America defeated Hitler and other tyrants in World War II and we do not want to end up with that brand of tyranny here. We are lurking in dangerous territory when we allow these unreasonably long periods of detainment without a trial; therefore, it amounts to a prison term and presuming guilt when our legal system presumes innocence. The individual is presumed innocent until the government proves otherwise (beyond a reasonable doubt) and that is a tough standard to meet. It is deliberately tough because we don't want our citizens locked away without good reason-without justice being served and the world should view us like this. If the Torture of detainees, secret government kidnapping, and indefinite detentions are not what our nation stands for, then why are we doing it? Please, do not let them get away with this behavior it is time to take a stand against injustice. My Response to John Quincy Adams's Modern Day Speech:

We must protect the rights afforded by our Constitution and the balance of power the Constitution ensures during times when it may be more expedient to sidestep core Constitutional values. Our constitution is a living breathing document that may be consulted and employed at our convenience because such capriciousness is characteristic of kingships and not of democracies, where people govern themselves.

Military tribunals may not encroach upon these core American values because when we allow them to, they undermine our role in the world schematic as peacekeepers. Now, the world views us as a nation that condones torture as the tribunals appear biased in favor of the military since they permit pretrial detention of persons. The international community is so incensed by the Guantanamo Bay fiasco that Spain has refused to extradite terrorists to the United States unless the United States agrees to an alternative forum. Clearly, torture is un-American and is reminiscent of dictatorial regimes that were never democratic and this kind of oppression is unconscionable. Our image as the great champions of freedom or the liberators remains tarnished forever because of these detentions and the horrific treatment of the detainees.

This will surely result in a lasting bitterness between us and them and when the war on terror is all over, surely, the detainees will not forget their severe conditions. This kind of torture and harsh treatment plants the seeds for a continued conflict. How can we come to a form of reconciliation? The hatred is being cast too deep and I am not sure if we can generate a lasting peace. In fact, there are a lot of people who are trying to end the hatred but all efforts are thwarted if the United States government continues to ignore the will of its people. Everything will stay the same unless we face this problem and we may have to admit that we do not have all the answers. John Quincy Adams is correct that fear is playing a part when this desperate nation locks up people detaining them with no clear end in sight. The critic Mitchell Rilke puts it best that fears take us back to our childhoods then we felt helpless and everything seemed larger than life. Rilke described the fear of falling asleep that she might swallow a piece a coal and she prays that her childhood will return. When the world gets to be too much, we may all wish that we could hide under our beds, but we cannot. In short, our bravery and determination will be determined by how we respond to adversity.

### **Works Cited**

- Ellison, Ralph. *The Invisible Man*. New York: Vintage, 1972. Print.
- Jones, Howard. "Mutiny on the Amistad: The Saga of a Slave Revolt and Its Impact on American Abolition," *Law and Diplomacy*. England: Oxford University Press, 1988, 6.
- Margulies, Joseph. *Guantanamo and the Abuse of Presidential Power*. New York: Simon & Schuster, 2006. Print.
- Meyers, Walter. *A Long Road to Freedom*. New York: Puffin Publishers, 2001, 4.
- Osagie, Iyunolu. *The Amistad Revolt, Memory, Slavery, and the Politics of Identity in the United States and Sierra Leone*. Georgia: University of Georgia Press, 2000.
- Rilke, Mitchell, trans. *Ahead of All Parting: The Selected Poetry & Prose of Rainer Maria Rilke*. New York: Modern Library Press, 1995, 251. Print.
- United States v. Cinque, US Supreme Court, argued, February 12, 1841.
- Zeinhart, Karen. *The Amistad Slave Revolt & American Abolition*. New York: Linnett Books, 1997. Print.