



## 'National yawn as our rights evaporate'

New law redefines habeas corpus; law professor explains on 'Countdown'

TRANSCRIPT

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*On Tuesday, "Countdown" host Keith Olbermann talked to Jonathan Turley, a constitutional law professor at George Washington University about a new bill signed by President Bush that redefines the right of habeas corpus.*

*Read the transcript below.*

History does not play well at this White House. Expressionless faces would probably greet references to how John Adams ended his political career by insisting he needed the Alien and Sedition Acts to silence his critics in the newspapers, or how Franklin D. Roosevelt's executive order to seize Japanese-Americans during World War II necessitated a formal presidential apology eight presidents later.

But even so, somebody probably should have told President Bush that today was the exact 135th anniversary, to the day, that President Grant suspended habeas corpus in much of South Carolina for the noble and urgent purpose of dispersing the Ku Klux Klan and making sure the freed slaves had all their voting rights, neither of which has yet truly occurred. It is your principal defense against imprisonment without charge and trial without defense thrown away for no good reason, then and now.

Our fifth story on "Countdown": President Bush, happy Habeas Corpus Day.

First thing this morning, the president signed into law the Military Commissions Act of 2006, which does away with habeas corpus, the right of suspected terrorists or anybody else to know why they have been imprisoned, provided the president does not think it should apply to you and declares you an enemy combatant.

Further, the bill allows the CIA to continue using interrogation techniques so long as they do not cause what is deemed, quote, "serious physical or mental pain." And it lets the president to ostensibly pick and choose which parts of the Geneva Convention to obey, though to hear him describe this, this repudiation of the freedoms for which all our soldiers have died is a good thing.

(BEGIN VIDEO CLIP)

**PRESIDENT BUSH:** This bill spells out specific, recognizable offenses that would be considered crimes in the handling of detainees, so that our men and women who question captured terrorists can perform their duties to the fullest extent of the law. And this bill complies with both the spirit and the letter of our international obligations.

(END VIDEO CLIP)

**OLBERMANN:** Leading Democrats view it differently, Senator Ted Kennedy calling this "seriously flawed," Senator Patrick Leahy saying it's, quote, "a sad day when the rubber-stamp Congress undercuts our freedoms," and Senator Russ Feingold adding that "We will look back on this day as a stain on our nation's history."

Outside the White House, a handful of individuals protested the law by dressing up as Abu Ghraib abuse victims and terror detainees. Several of them got themselves arrested, but they were apparently quickly released, despite being already dressed for Gitmo.

To assess what this law will truly mean for us all, I'm joined by Jonathan Turley, professor of constitutional

law at George Washington University.

I want to start by asking you about a specific part of this act that lists one of the definitions of an unlawful enemy combatant as, quote, "a person who, before, on, or after the date of the enactment of the Military Commissions Act of 2006, has been determined to be an unlawful enemy combatant by a combatant status review tribunal or another competent tribunal established under the authority of the president or the secretary of defense."

Does that not basically mean that if Mr. Bush or Mr. Rumsfeld say so, anybody in this country, citizen or not, innocent or not, can end up being an unlawful enemy combatant?

**JONATHAN TURLEY, GEORGE WASHINGTON UNIVERSITY CONSTITUTIONAL LAW PROFESSOR:** It certainly does. In fact, later on, it says that if you even give material support to an organization that the president deems connected to one of these groups, you too can be an enemy combatant.

And the fact that he appoints this tribunal is meaningless. You know, standing behind him at the signing ceremony was his attorney general, who signed a memo that said that you could torture people, that you could do harm to them to the point of organ failure or death.

So if he appoints someone like that to be attorney general, you can imagine who he's going to be putting on this board.

**OLBERMANN:** Does this mean that under this law, ultimately the only thing keeping you, I, or the viewer out of Gitmo is the sanity and honesty of the president of the United States?

**TURLEY:** It does. And it's a huge sea change for our democracy. The framers created a system where we did not have to rely on the good graces or good mood of the president. In fact, Madison said that he created a system essentially to be run by devils, where they could not do harm, because we didn't rely on their good motivations.

Now we must. And people have no idea how significant this is. What, really, a time of shame this is for the American system. What the Congress did and what the president signed today essentially revokes over 200 years of American principles and values.

It couldn't be more significant. And the strange thing is, we've become sort of constitutional couch potatoes. I mean, the Congress just gave the president despotic powers, and you could hear the yawn across the country as people turned to, you know, "Dancing with the Stars." I mean, it's otherworldly.

**OLBERMANN:** Is there one defense against this, the legal challenges against particularly the suspension or elimination of habeas corpus from the equation? And where do they stand, and how likely are they to overturn this action today?

**TURLEY:** Well, you know what? I think people are fooling themselves if they believe that the courts will once again stop this president from taking over—taking almost absolute power. It basically comes down to a single vote on the Supreme Court, Justice Kennedy. And he indicated that if Congress gave the president these types of powers, that he might go along.

And so we may have, in this country, some type of uber-president, some absolute ruler, and it'll be up to him who gets put away as an enemy combatant, held without trial.

It's something that no one thought—certainly I didn't think—was possible in the United States. And I am not too sure how we got to this point. But people clearly don't realize what a fundamental change it is about who we are as a country. What happened today changed us. And I'm not too sure we're going to change back anytime soon.

**OLBERMANN:** And if Justice Kennedy tries to change us back, we can always call him an enemy combatant.

The president reiterated today the United States does not torture. Does this law actually guarantee anything like that?

**TURLEY:** That's actually when I turned off my TV set, because I couldn't believe it. You know, the United States has engaged in torture. And the whole world community has denounced the views of this administration, its early views that the president could order torture, could cause injury up to organ failure or death.

The administration has already established that it has engaged in things like waterboarding, which is not just torture. We prosecuted people after World War II for waterboarding prisoners. We treated it as a war crime. And my God, what a change of fate, where we are now embracing the very thing that we once prosecuted people for.

Who are we now? I know who we were then. But when the president said that we don't torture, that was, frankly, when I had to turn off my TV set.

**OLBERMANN:** That same individual fell back on the same argument that he'd used about the war in Iraq to sanction this law. Let me play what he said and then ask you a question about it.

(BEGIN VIDEO CLIP)

**PRESIDENT BUSH:** Yet with the distance of history, the questions will be narrowed and few. Did this generation of Americans take the threat seriously? And did we do what it takes to defeat that threat?

(END VIDEO CLIP)

**OLBERMANN:** Does he understand the irony of those words when taken out of the context of this particular passage or of what he perceives as the war against terror, and that, in fact, the threat we may be facing is the threat of President George W. Bush?

**TURLEY:** Well, this is going to go down in history as one of our greatest self-inflicted wounds. And I think you can feel the judgment of history. It won't be kind to President Bush.

But frankly, I don't think that it will be kind to the rest of us. I think that history will ask, Where were you? What did you do when this thing was signed into law? There were people that protested the Japanese concentration camps, there were people that protested these other acts. But we are strangely silent in this national yawn as our rights evaporate.

**OLBERMANN:** Well, not to pat ourselves on the back too much, but I think we've done a little bit of what we could have done. I'll see you at Gitmo. As always, greatest thanks for your time, Jon.

**TURLEY:** Thanks, Keith.

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