

## THE “GREAT WRIT” — AND ITS IMPORTANCE

From the Magna Carta’s prohibition against unlawful imprisonment, to recent U.S. Supreme Court decisions protecting detainees held at Guantanamo, the rule of law has defined our legal system and shielded individuals from government abuse.

Habeas corpus is not a fancy legal term. It’s the freedom from being thrown in jail illegally, with no help and no end in sight.

No government should ever be given the power simply to label someone an “enemy” and lock him or her away indefinitely.

But that was the power given to the president by the Military Commissions Act, approved right before the November 2006 elections.

The MCA strips away the core right of any non-citizen declared an “enemy combatant” to be heard in court to establish innocence.

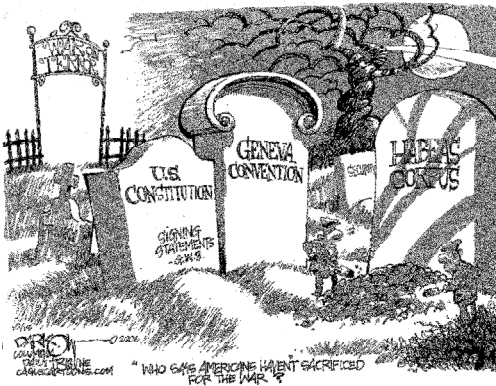
The act was hurriedly passed because earlier in 2006 the Supreme Court had found that the military commissions created by the president at Guantanamo were invalid. These commissions were overseeing the detention of enemy combatants.

The court said that the commissions violated the Geneva Conventions regarding the treatment of detainees.

Is the MCA legal?

Not according to the Constitution. Article 1, Section 9 states that “The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.”

Several challenges to the MCA have been filed and are working their way through the courts.



Cartoon by John Barkow, Columbia Daily Tribune, Missouri

## THE MILITARY COMMISSIONS ACT

Under the Military Commissions Act:

- ◆ The president has absolute power to decide who is an “enemy.”
- ◆ “Enemies” can be imprisoned indefinitely without charge or legal justification.
- ◆ Detainees can be denied court review of their imprisonment.
- ◆ The president can define what is — and isn’t — torture and abuse, regardless of the Geneva Conventions or any other human rights law.
- ◆ Convictions may be based on coerced evidence — even evidence gathered when detainees may have been kidnapped abroad and tortured in overseas prisons.
- ◆ Government officials who authorized or ordered illegal acts of torture and abuse

are granted retroactive immunity.

The MCA was sparked by the Supreme Court’s ruling in *Hamdan v. Rumsfeld*. The court said that the original military commission system established by President Bush to try detainees at Guantanamo Bay was unfair and illegal. The MCA essentially ratifies key parts of the illegal commissions, reversing in part the Supreme Court decision.

Without habeas protections and due process, we are almost certainly holding innocent people behind bars. In fact, the Bush administration has already acknowledged that at least 140 of the prisoners held at Guantanamo are not terrorists — they are individuals who were simply in the wrong place at the wrong time.

### HABEAS TIMELINE

- June 15, 1215  
Signing of the Magna Carta
- Sept. 17, 1787  
U.S. Constitution, with its habeas guarantee, adopted
- 1861  
Habeas suspended by Lincoln during widespread rioting; one person arrested
- 1941  
Hawaii’s governor authorized to temporarily suspend habeas in wake of Pearl Harbor
- June 25, 2001  
Supreme Court rules new law cannot deny habeas rights for certain resident aliens
- October 17, 2006  
Military Commissions Act signed
- April 2, 2007  
Supreme Court declines review of two Guantanamo habeas cases

## RESTORING HABEAS AND FIXING THE MCA

Several bills have been introduced in Congress that would restore habeas corpus rights to detainees and reaffirm that no president can make up his or her own rules regarding torture and abuse.

### Restoring the Constitution Act of 2007 (H.R. 1415, S. 576):

- ◆ Ends indefinite detention by restoring habeas corpus and due process.
- ◆ Makes clear that the Constitution is the law of the land. The RCA stops any president from arbitrarily deciding who is an enemy combatant, ensures that no one will be prosecuted based on coerced evidence, and ensures that no president

can make up his or her own rules regarding torture and abuse.

- ◆ Ensures top government officials are held accountable. The bill makes sure that all felony torture and abuse can be prosecuted, even if the perpetrator is sitting in an office in Washington instead of serving as a private in the field.

### Habeas Corpus Restoration Act (H.R. 1416, S. 185):

- ◆ Restores constitutional due process right of habeas corpus.
- ◆ Protects against unlawful detention through court review.



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## PROTECTING THE RULE OF LAW

Robert Gensburg, an ACLU-VT cooperating attorney, is one of three Vermont lawyers offering pro bono representation for Guantanamo detainees. He spoke at the ACLU-VT's 2006 annual meeting. Here are excerpts from an Oct. 22, 2006 *Sunday Rutland Herald-Times Argus* story:

"Robert Gensburg...says civil rights violations perpetrated against 'enemy combatants' in Cuba threaten to undermine the constitutional precepts that safeguard U.S. citizens everywhere against unjust imprisonment....

"The first principle, almost by which I live, is adherence to the rule of law," Gensburg said. "With this administration, the rule of law is undergoing very serious erosion...."

"The reason for this behavior given by the government is that national security requires it," Gensburg said. "It's time to stop and question the national security claims the government is trying to make."

Sen. Patrick Leahy focused the attention of the Senate Judiciary Committee — which he chairs — on habeas corpus in a hearing May 22. Here are excerpts from his remarks:

"It is urgent that we restore our legal traditions and reestablish this fundamental check on the ability of the Government to lock someone away without meaningful judicial review of its action. The time to act is now....

"The Military Commissions Act, passed hastily in the weeks leading up to last year's election, was a profound mistake, and its elimination of habeas corpus rights was its worst error....

"... I implore those who supported this change to think about whether eliminating habeas truly makes America safer in the world, and whether it comports with the values, liberties, and legal traditions we hold most dear."

### THE BOTTOM LINE

Our Constitution is what distinguishes America from other countries. It's what makes us Americans. To do away with its protections makes us more like those we are fighting against.

## Carry the card?



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