



# THE VIEW

Issue #54

June 30, 2008

## HABEAS CORPUS 101

BY

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In the week that we celebrate our independence as a nation perhaps we should stop for a moment to consider how our partisan passions sometimes mislead us. As we pause we should also give thanks to that all important concept of a free people – habeas corpus. Judging by the letters to the respective editors of various newspapers around the state of Mississippi and beyond, the recent decision by the United States Supreme Court in the case of *Boumediene v. Bush* in which detainees at the U.S. Navy base at Guantanamo Bay, Cuba were given expanded rights of procedural due process has struck a nerve. Furthermore, the wording of these expressions of concern lead one to believe that those who have traditionally supported the individual liberty protecting qualities against government tyranny contained in the right to file writs of habeas corpus have switched places with those who advocate strong action by a central government.

In this seemingly endless season of “hyper-partisanism” we should indeed draw in a deep breath and consider just what it is we are talking about when the legal term habeas corpus is uttered. Before I launch into this discussion I should offer the disclaimer that I am not a Constitutional lawyer or a Professor who specializes in Constitutional law. I am rather an observer who gets nervous at any time when it appears that precedent setting tampering that strengthens the hand of government at the expense of individual liberties is about to happen. Habeas corpus is the name given to a legal action or a writ. Literally Habeas corpus means, “You have the body”. According to the website [LectLaw.com](http://LectLaw.com) “A writ of habeas corpus is a judicial mandate .... ordering that an inmate be brought to the court so it can be determined whether or not that person is

imprisoned lawfully and whether or not he should be released from custody.” The writ of habeas corpus has also been referred to as “The Great Writ”. Its affect throughout its long history has been to stay the hand of overreaching and even potentially dictatorial government in depriving individuals of liberties without cause. In essence, the writ of habeas corpus compels the government to present the person being held in custody in order that he may be afforded due process as to the reasons he is being held. Down through the ages, in the absence of habeas corpus, a government could capture and detain indefinitely anyone it so chose with no regard to reasons why or the length of detention.

The philosophical dilemma arises with regard to the exceptions available within the United States constitution. Chief among these exceptions appears in Article One, Section 9 of the Constitution where it is stated 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.” The debate rages over whether the Guantanamo detainees, formally labeled by the Bush administration as “Enemy Combatants”, meet the definition of having invaded this country and whether they are a threat to public safety. One side maintains that these are the world’s worst of the worst and that as such they may be subject to permanent detention with a minimum of legal opportunity as provided by the United States military. The other side says that the process of adjudicating the status of these 400 plus detainees can only move forward fairly by the provision of a level of procedural due process that is customarily available to citizens of the United States.

As one might expect the usual accusations of “liberal activism” versus “patriotic conservatism” have been hurled back and forth by amateur and professional politicians alike. The Supreme Court in its June 12 holding in the case of *Boumediene v. Bush* according to the New York Times, “declared unconstitutional a provision of the Military Commissions Act of 2006 that .... stripped the federal courts of jurisdiction to hear habeas corpus petitions from Guantanamo detainees seeking to challenge their designation as “enemy combatants”. Presumptive Republican Presidential nominee John McCain immediately expressed his concern for conveyance of such status to detainees who were not even American citizens. By contrast McCain’s Democratic rival Barack Obama approved of the Court’s 5 to 4 decision saying that the holding went along way toward “reestablishing our credibility as a nation committed to the rule of law”.

Opinion was sharply divided on the Supreme Court itself. Justice Antonin Scalia, in stark opposition to the majority, said that now the military would have

the additional difficult task of proving in a court of law that evidence supports the detention of each and every detainee. Justice Anthony Kennedy, writing for the majority, stated, that under our Constitution, liberty and security can be reconciled even in extraordinary times and the framers believed that habeas corpus must be a part of that framework.

The Supreme Court got this one right but the debate is certainly a legitimate one. At the end of the day, however, the Court struck a blow in behalf of individual liberty. The rightness of the United State's cause will not be harmed by her effective demonstration to the world of the appropriateness government by the rule of law. That independence we celebrate on July 4 will be made richer in the process.

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William Martin Wiseman is Director of the John C. Stennis Institute of Government and Professor of Political Science at Mississippi State University. He received his Ph.D in 1986, his MPPA in 1980, his MS in 1974, and his BA in 1973, all awarded from Mississippi State University. In addition to his duties at Mississippi State, Dr. Wiseman is a guest professor at Jackson State University. Dr. Wiseman's areas of academic interest include American government, intergovernmental relations and federalism, county and municipal management, public personnel administration, and innovations in state and local government management.

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