

**Justice Talking Listening Guide**  
**Writ of Habeas Corpus in Wartime**  
4/24/06

**SHOW SUMMARY**

In late March, the Supreme Court heard arguments in *Hamdan v. Rumsfeld*, in which Salim Ahmed Hamdan, a Yemeni national detained at Guantanamo Bay, challenged the fairness and legitimacy of the military commissions set up by President Bush after 9/11. On this edition of Justice Talking, we'll look at the larger questions raised by this case, including the ability of Congress to suspend the writ of habeas corpus during wartime. Can Congress deny prisoners the right to challenge their detentions as unlawful in federal court?



**Lyle Denniston**

- Part 1: **Lyle Denniston**, a veteran Supreme Court reporter, speaks with Margot about the history of the *Hamdan v. Rumsfeld* case.



**Jonathan Hafetz**

- Part 2: **Jonathan Hafetz**, an expert on the history of the writ of habeas corpus, talks with Margot about the writ's importance in the American legal system.



**Peter Rubin**

- Part 3: **Peter Rubin**, a constitutional law professor, and **Jack Einwechter**, a lawyer and former military intelligence officer, debate whether Congress has the power to suspend the writ of habeas corpus in cases where enemy combatants challenge their detention at Guantanamo Bay.



**John Einwechter**

- Part 4: **David Luban**, a legal ethicist, speaks with Margot about whether or not Justice Antonin Scalia should remove himself from the *Hamdan* case because he has spoken publicly about the issue.



**David Luban**



In response to a lawsuit, the Pentagon releases its first-ever public listing of detainees held at the Guantanamo Bay prison. The documents list 558 people. Only a handful of the prisoners have ever faced formal charges.

Listen to this April 20<sup>th</sup> National Public Radio report at <http://www.npr.org/templates/story/story.php?storyId=5352799>.



**Host Margot Adler**

Margot Adler is a National Public Radio correspondent based in NPR's New York Bureau. Adler has thirty years of experience as a radio host and reporter and is the author of several books. She lives in New York City with her husband and son.

## DEFINITION OF TERMS

**Writ of Habeas Corpus** – a formal order issued by a judge in order to bring a prisoner before a court. In most cases, the habeas corpus writ is used to challenge the legality of a prisoner’s detention. This is called the writ of habeas corpus ad subjiciendum, which is Latin for “that you may have/hold the body to be subjected to (examination).” The writ of habeas corpus is explicitly guaranteed in Article I, Section 9 of the Constitution and cannot be suspended except in cases of “rebellion or invasion” where the public is in danger.

**Geneva Conventions** – a series of international treaties signed by almost every nation in the world, designed to protect human rights during warfare. The conventions protect civilians and soldiers from torture and ensure that they are humanely treated. The first convention established that hospitals and other medical facilities were not to be targeted during war, and that those facilities should treat all wounded people the same. The third convention establishes that prison camps should be open to inspection by neutral countries.

**Guantanamo Bay Naval Base** – a base at the southeastern end of Cuba on land that has been controlled by the United States since the Spanish-American War in 1898. The base is currently being used to detain prisoners captured in Afghanistan and Iraq. The U.S. says treatment of these prisoners isn’t covered by the Geneva Conventions.

## DISCUSSION QUESTIONS

1. Why is Congress, and not the president, allowed to suspend the writ of habeas corpus? What problems might arise from suspending this writ during the war on terror?
2. Why is it controversial that President Bush has ordered people detained in the war on terror be tried by military commission? Do you think he did the right thing? Why?



### ***Check out the Justice Learning timeline on civil liberties in wartime!***

September 24, 1862: Citing the threat to the Union posed by confederate spies, President Abraham Lincoln suspends the writ of habeas corpus. Although the U.S. Supreme Court later rules that only Congress has the power to suspend the writ, Lincoln ignores the High Court.

June 3, 2003: The Inspector General of the Justice Department releases a report citing “significant problems” with the Department’s detentions of hundreds of illegal immigrants after September 11. According to the report, government officials “made little attempt to distinguish” between possible terrorists and people with no connection to terrorism, and, once jailed, those with no terrorist ties still remained incarcerated for lengthy periods of time.

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