

# COACH BUSH IS 3-23 IN REAL COURTS ON GITMO SHOW TRIALS; KATYAL, THE HERO OF HAMDAN, TO JOIN OBAMA ADMINISTRATION

✖ If your local football coach was 3 wins and 23 losses for the season, you could rest assured of two things; one, you are a Detroit Lions fan and, two, the coach is getting fired. Well, there was an interesting little article that was published in today's New York Times, and the upshot is that 3 and 23 is exactly what the Bush/Cheney regime's record is when their Guantanamo Detainee cases see the sunshine of a real court. Clearly we have pretty much been endlessly detaining a lot of innocuous people on unsubstantiated evidence.

Describing the release last weekend of Haji Bismullah, an Afghan detainee held at Guantánamo Bay for nearly six years, the Times notes:

The decision was part of a pattern that has emerged in the closing chapter of the administration. In the last three months, at least 24 detainees have been declared improperly held by courts or a tribunal – or nearly 10 percent of the population at the detention camp in Guantánamo Bay, Cuba, where about 245 men remain.

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While Mr. Bismullah's case was decided by a military panel, the rulings for the other 23 detainees occurred in habeas corpus hearings in federal court. Since a Supreme Court decision in June gave detainees the right to have their detentions reviewed by federal judges in habeas cases, the government has won

only three of them.

Get that?? 3 and 23. Not. Real. Good. Certainly puts the lie to Cheney and Bush's promises that they were holding only the "worst of the worst" after all these years doesn't it?

The cases provide a snapshot of the intelligence collected by the government on the suspects and suggest that there was little credible evidence behind the decision to declare some of the men enemy combatants and to hold them indefinitely.

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"The government's failure in case after case after case to be able to prove its case calls into question everybody who is there," said Susan Baker Manning, a lawyer for 17 Uighur detainees from western China who were ordered released by a federal judge in October. The Justice Department has appealed that order from a federal district judge, Ricardo M. Urbina, and the men are still at Guantánamo.

Well, I guess, as shocking as it is, this is not exactly breaking news anymore. The brittle patina of legitimacy and credibility, to the extent there ever was any, began to crack with the first major court decision on the Bush/Cheney/Rumsfeld military commission process, *Hamdan v. Rumsfeld*, was decided. In that regard, there is excellent news to report.

Neal Katyal, Professor of National Security Law at Georgetown University Law Center and lead counsel in the Supreme Court on *Hamdan v. Rumsfeld*, has been chosen to be the Obama Administration's Principal Deputy Solicitor General, the office's No. 2 spot, according to the Legal Times.

Katyal's appointment is another strong signal of President-elect Barack Obama's

intentions to depart sharply from the terrorist detention and interrogation policies of the Bush administration. In Hamdan, the Supreme Court found that the Bush administration's military commissions for trying suspected terrorists violated the Uniform Code of Military Justice and the Geneva Conventions.

Unlike the nominee for solicitor General, Elena Kagan, Katyal does have experience before the Supreme Court, but not exactly a wealth of it. Nevertheless, the fact that Obama has chosen Kagan and Katyal to lead the SG's Office sends a clear and unmistakable message that massive change is underway, and that it is in the opposite direction from the unconscionable and immoral policies of torture set by the Bush/Cheney regime. Welcome news indeed.