

UP WITH CHRIS HAYES for January 27, 2012, MSNBC - Part 4

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BENNIS: The law doesn't say that. I mean, it should in my view, that if you torture somebody, they should be released.

TREVINO: Even Khalid Sheikh Mohammed?

BENNIS: But it does not say that.

TREVINO: Even Khalid Sheikh Mohammed?

BENNIS: He's not subject to this law. But I'm just talking about what U.S. law should be if I were writing law.

But the point is, it doesn't say that. The point is, it says if someone is tortured, you can't use what they told you under torture.

HAYES: That's right.

BENNIS: I think they have some additional evidence about--

(CROSSTALK)

SERWER: They have a lot of additional evidence.

BENNIS: They have a lot of stuff that they can raise, and it's enough to convince without having to use what they got during torture.

SERWER: They've been having conversations for 10 years talking about this stuff.

BENNIS: Right. And they have got this all on tape.

(CROSSTALK)

HAYES: So the point is that Khalid Sheikh Mohammed could be tried in a civilian court.

BENNIS: Absolutely.

HAYES: In downtown -- and still be -- stand a reasonable chance of conviction.

WARREN: And the only reason why it doesn't happen is because of the politics of the situation. And that's, again, going back to the big problem.

But even looking at military commissions, and so you have this little (ph) case where there was this ruling. Let's put this back on the Obama administration again. So there's the political piece with Congress and there's George Bush, but here's what the Obama administration can and should do. They're in the position to decide whether they are going to appeal this court ruling about conspiracy, right, the nonwar crimes, crimes in a war court.

HAYES: In which a court vacated a conviction.

(CROSSTALK)

WARREN: The Obama administration should not appeal that conviction -- that decision, because what that would do is it would move that whole process forward. It would give them a political footing to say, look, either we are a rule of law presidency or we are not, and we have to abide by this. Let's shift these trials to civilian courts, let's take the political heat on these things. We'll still get immigration passed, we'll still get gun control passed, but the state of our democracy, the foundation of our democracy rests on these next few days.

HAYES: I interviewed in January Lakhdar Boumediene, who is a famous detainee at Guantanamo because of one of the most important Supreme Court cases about habeas bears his name. And when we come back, I want to just play a little clip just to remind people of the human stakes here. You talked about political problem, legal problem. There's a human problem. Which is there are human beings who are

rotting in a prison, even if it has nice facilities, with no access to their families, to their lives, and they have been there now for in some cases 11 years, and they haven't done anything. I mean, that's the key point. This is like, there are people who really have not done anything, and they are in there for 11 years.

And I want to talk about whether the Obama administration really does have a plan to close it, or are we going to have Guantanamo forever, right after this.

(COMMERCIAL BREAK)

(BEGIN VIDEO CLIP)

LAKHDAR BOUMEDIENE, FORMER GUANTANAMO DETAINEE (through translator): I read that Guantanamo and they removed the black bag from my head and the muffs from my ear and blind folds, you know, it was a big shock to me. And I said to myself is this America that respects human rights? During the preliminary investigations, interrogations, I mean, I thought that America was a great country and that there was justice and freedom and human rights and that they were realized during within a day or two that -- or maybe a month, you know, that they would realize that I am innocent and they will let me go home to my family, but it was totally the contrary. This is something that I will never forget.

(END VIDEO CLIP)

HAYES: That's Lakhdar Boumediene, who is a Guantanamo detainee. Adam, is there a plan right now to close the facility?

SERWER: I don't think there's a plan to close the facility. Obviously the administration is working to transfer the people that they can transfer, but I don't think there's -- there's no plan without Congress approving the money to transfer the people that they don't want to release to American soil, which, you know, for all sorts of reasons, you know, even civil liberties groups oppose it as long as the administration is still relying on indefinite detention without trial as a kind of terrorism tool. So it's -- it's -- I mean there's -- it's hard to see a way, in which Guantanamo gets closed in the next three years.

HAYES: And does this mean that we're just erosion? Is it just going to stay open until all of these people die? I mean I'm serious, I mean is that what we're looking at, that's just sort of bleak years, not months?

BENNIS: It is really to that point, because there is no endgame here. Everybody kind of agrees that the so-called global war on terror, which in my view was never a war except to the degree that we made it a war, has a defined end date and so the whole Geneva convention requirement about the release of prisoners of war after the end of hostilities, how do you define the end of hostilities if you don't have a declared war in the first place?

(CROSSTALK)

HAYES: I mean, I think one of the things this returns us to, which is a theme that has emerged and Jay Johnson gave that speech as General Counsel with the Department of Defense about talking about an end to this permanent -- this war, this quasi-permanent war state. The president in his inauguration talked about what the dangers of a permanent war state. We had Barbara Lee on the program last weekend who was the one person to vote against the authorization of the use of military force and who is now sponsoring congressional legislation to essentially repeal the authorization of the use of military force, and kind of a way of declaring the end of this war.

And it does seem to me that whenever we cover anything in this sphere, it does points back to the question you raised, which is like how long are we in the state of war? Can the state of war ever end? And if you're in a state of war that can never end, something is wrong, right? Something is definitionally wrong, I think.

TREVINO: Well, we have -- we have some recent history to draw from, not a perfect parallel, but when we look at the early Cold War, there was essentially a state of national emergency perceived, or actually declared depending on the year, really from 1948 until some vague point ...

HAYES: Yes.

TREVINO: ... in the 1960s after -- after Kennedy essentially. And so it took us, you know, almost two decades to figure out what that looked like and the kind of normalized procedures and processes within that. And it may take that long, with that state, which is a real state of war with respect as well. But we'll see.

WARREN: In respect to what Josh is saying in that 20 or 30-year period there was a lot of political posturing that was cropping up. The specter ...

HAYES: Right.

WARREN: ... of communism around the world and the U.S was taking very aggressive policies ...

HAYES: Right.

WARREN: ... with respect to that and we're seeing a lot of that specter come up with respect to terrorism. The question really is not how long will the war last, the question is what the hell is this war that we're fighting?

HAYES: Yes.

WARREN: And legally, how does that lead to our ability now to drop drones on the rest of the world?

HAYES: All right, what you should know for the news week ahead coming up next.

(COMMERCIAL BREAK)

HAYES: In a moment, what you should know for the news week ahead. But first, a few updates on some stories we have been following. In November, we discussed the number of requests for user information Google receives from the U.S. government. The time Google said U.S government requests for user data continued to rise in the first six months of 2012. According to Google`s latest transparency report, this is a global trend, during the last six months, Google has received by far the most requests for user information from governments around the world. From July to December, Google received nearly 21,000 requests, 17 percent more than during the same period over the last year.

And we have yet more evidence that austerity is not working in Europe to spur economic growth or cut government debt. According to EuroStat, during the third quarter of 2012, government debt relative to annual economic input -- output in the European Union, which has seen many countries for several years, embarking a regime of cutting spending and raising taxes was barely changed at 90 percent of GDP. Actually, it rose from 89.9 percent the three months earlier and is up from 86.8 percent of GDP in 2011.

Finally, before the presidential election, we discussed business owners threatening the layoffs if President Obama was reelected. One of them, Murray Energy CEO Robert Murray told employees if they did not donate to the Canvass Political Action Committee, "The coal industry will be eliminated and so will your job." Murray also forced his employees to attend without pay or rally for Mitt Romney in a mine operated by Murray Energy, Ohio. In midsummer Murray said the company would shut down the coal plant entirely, the Red Bird West Mine, which employed 56 people because of the president`s policies. "The New Republic" now reports that Murray is starting to hire at the Red Bird West Mine again. The company denies its reopening the plant and said it will hire back 42 or 43 people to work in the place for a, quote, "drawdown" that will take place over the next several years.

So, what you should know for the week coming up. You should know it is now illegal under federal law to unlock your Smartphone if you purchased it after Saturday. Unlocking or cracking a phone is a process many owners use so they can use their phone on any cell network, not just the one to which it is contractually tied. Until recently, the U.S. Copyright Office had granted an exemption to the Digital Millennium Copyright Act that allowed users to engage in the practice, but that exemption is now kaput. That means that wireless carriers could conceivably sue consumers who purchase and unlock their phones. You should know this suggests the latest example of a copyright regime that is broken and dysfunctional.

You should know the full bio and resume of Mary Jo White, the president`s choice to head up the Securities and Exchange Commission. You may have heard that Mary Jo White is a former federal prosecutor with hands-on experience prosecuting white collar crime. And that her nomination was a signal to Wall Street that accountability was in store. But you should also know that after serving as a prosecutor, Mary Jo White went to find the practice defending big shot white collar titans of industry, including former Bank of America CEO Kenneth Lewis. You should know the revolving door continues to spin, and the incestuous relationships between big

banks, big law and their regulators on absolutely essential reason we`ve not seen a real accountability for the systemic fraud in the run-up to and the wake of the financial crisis. You should know Mary Jo White now has an opportunity to prove her doubters wrong.

As the election recedes from memory, and an outrage of the voters suppression adds with it, you should know that thanks to a new study, we now know roughly how many people were denied their ability to vote by the unconscionably long lines in the state of Florida. According to the analysis of data collected by the Orlando Sentinel, there were roughly 200,000 voters gave up in frustration on election day and never voted because the lines were so long. Ohio State University Professor Theodore Allen who crunched the numbers told the Sentinel the actual number of deterred voters including those who never even went to the polling place, because they knew how the long the lines were, was likely even larger.

You should know the main reason Florida election officials give for the ridiculously long lines on election day was the reduction in early voting days from 14 to eight days passed by the Republican legislature and signed by Republican Governor Rick Scott. An AFL-CIO survey of voters nationwide in November found that only nine percent of white voters had to wait half an hour or more to vote compared to 22 percent of black voters and 24 percent of Hispanic voters. You should know that Republicans attempts to make it harder to vote won`t be abandoned anytime too soon, especially, if they keep losing national elections. I want to find out what my guests think we should know the week coming up, beginning with you, Phyllis Bennis.

BENNIS: We should know that this is the second anniversary of the Arab Spring`s revolt in Egypt. And one of the things that it`s led to, although there`s huge crises in Syria and Libya and Mali and other places related to the Arab Spring, one of the great pieces of this is still a very positive process, is that in the Palestinian territories, there`s a whole new non- violent tactic under way where Palestinians are rebuilding villages on Palestinian land, the same places where Israeli settlers illegally are trying to settle. The Israeli government has responded with vicious brutality, tearing down the encampments, tearing down the new villages. But this is now going forward as a regular, normalized process as part of the non-violent pressure to end the occupation.

HAYES: Josh Trevino.

TREVINO: February 12, State of the Union the president is rumored to be announcing his omnibus immigration reform package. So we are going to see a lot of hints and suggestions dropped as to what that is going to contain. Watch as you do for the proposals that look like real immigration reform with movement of labor across the borders in a safe, secure and orderly fashion, which does not exist for unskilled labor now, and watch which of those will merely normalize the existing population, which, arguably necessary, is also what was done in the failed 1986 Simpson-Mazzoli reform.

HAYES: This is the sort of what do we do now when people hear versus what do we

do about regulating the future flow question.

TREVINO: Exactly. Whether we have to revisit it in a generation.

HAYES: Vince Warren.

WARREN: You know, the secretary -- the State Department special envoy for the closure of Guantanamo, Dan Fried, has left the building. He is moved on to a different job, that job has not been filled by anybody new, and in fact it's supposed to be taken over by someone in office ...

HAYES: I think (inaudible) bad jokes, that job listing.

WARREN: It's exactly, who wants that job. But I think it is very important over the next week and will be forward to answer the question that you raised on this question, what is the plan for Guantanamo, unless they have somebody in that position, it's not going to happen.

HAYES: Adam Serwer.

SERWER: Josh actually took mine, and I was going to say you should pay attention, but I want to put a different spin on it. You should pay attention to Republicans like Paul Ryan and Marco Rubio who had put forth immigration -- in broad strokes, immigration reform proposals very similar to things that the president himself has put forward in previous years, and you should look to see how they react to the president's immigration reform proposal.

HAYES: And you should also look at the fine print.

SERWER: Exactly.

HAYES: The devil is in the details about how many people are going to come in, how many are going to be allowed to stay. We are going to talk about immigration and gained citizenship ...

SERWER: Exactly.

HAYES: We're going to talk about immigration on next weekend, because I think we are going to see a lot of stuff leaked this week. So we'll be talking about that one. We'll be talking about it I think a lot this year.

I want to thank my guests today Phyllis Bennis of the Institute for Policy Studies, Josh Trevino, the Texas Public Policy Foundation, Vince Warren, for the Center of the Constitutional Rights and Adam Serwer, from "Mother Jones" magazine. Thank you all. Thank you for joining us. We'll be back next weekend Saturday and Sunday at 8:00 eastern time. Coming up next, Melissa Harris-Perry. We'll see you next week here on "UP."

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