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A Reach Too Far

Opinion
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LET'S PLAY "Who's an enemy combatant?"

A little old lady in Switzerland who sent a check to a charity to help an orphanage in Afghanistan -
- but instead the money was passed to al-Qaida operatives? Enemy combatant.

A man in London who thinks his cousin might be a member of al-Qaida but doesn't report him to
authorities? Yes again.

A teacher in Ireland who gave English lessons to an al-Qaida hit man -- or one of his relatives?
You guessed it.

What do they win? An open-ended ticket to prison, probably at Guantanamo Bay, Cuba. No
charges, no lawyer, no right to a speedy trial. What if they think maybe there was a mistake
somewhere, a misunderstanding? They can wait -- years -- with the rest of the about 550 people
already detained for a nonstandard, quasi-legal review board to determine their status. So far, the
reviewers have released one prisoner out of the 440 or so they've reviewed; the rest await some
sort of trial, sometime.

While at the U.S. Naval Base, the FBI and the International Red Cross say, they might face
punishments that some would call torture, and if they do happen to say anything that might be
incriminating, their statement can be quickly sent off to the review board to confirm its prejudice.

Think the game is rigged? So do we.

But it could happen, Deputy Associate Attorney General Brian Boyle acknowledged in U.S.
District Court this month when Judge Joyce Hens Green threw him the three hypothetical cases.
All could be held until their intent was determined, which at Guantanamo has taken years, and if
their "combatant" status were confirmed, they could be held forever -- or until the U.S. president
declares the "war on terror" over.

The issue came up in the legal debate over how to handle those the government declares enemy
combatants. The Supreme Court ruled in June that the prisoners held at Guantanamo, all of
whom are called enemy combatants by the administration, could challenge their indefinite
detention in U.S. courts. But it left the actual method up to the lower courts. To do that, Judge
Green and her colleagues first must clearly define "enemy combatant."

They may also need to redefine "battlefield" -- a test for who is a prisoner of war. If al-Qaida has a
global reach, as Mr. Boyle asserted, does that mean the whole world is a battlefield, everyone a
fighter?

The administration insists that this president has powers beyond measure, and the executive
branch does indeed have wider latitude during times of war. Even then, though, the latitude does
not include torture and breaking international rules such as the Geneva Conventions.

Treating foreigners as criminals without cause or recourse is hardly conduct befitting the world's
leading democracy.