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Guantánamo Bay Detainees A Fair Ruling, a Troubling Reaction

Editorial
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If an American soldier is captured on some distant battlefield, he could be denied prisoner-of-war status, and subjected to grueling, abusive interrogation amid inhumane living conditions.

And what explanation might his cruel captors offer? Hey, after 9/11, everything changed.

That grim future certainly is not what the Bush administration seeks as it continues to bungle its detention of hundreds of terrorism suspects at Guantánamo Bay, Cuba.

Yet it could turn out that President Bush's post-9/11 detention policies - denying POW status, imposing harsh conditions and interrogation, enforced secrecy - will weaken the global consensus that safeguards treatment of war captives.

Fortunately, the U.S. courts have begun forcing the administration to adjust course. If the courts prevail in promoting just treatment for captives in the war on terror, they might save American lives, as well.

Since a landmark ruling by the U.S. Supreme Court in June, terror detainees have had the right to a hearing. But the system of military reviews and commissions put in place at Guantánamo falls well short of the mark set by the high court.

In a welcome ruling last week, U.S. District Court Judge James Robertson forced a halt to the hearings. He said they were unfair and that officials had sidestepped detainee-treatment provisions of the Geneva Conventions on war.

The White House will appeal, but Robertson has forced the question: Can the chief executive of a nation simply declare detainees ineligible for POW status, hold them indefinitely, and try them according to justice-lite standards in which key evidence is kept secret?

In a banana republic, the answer might be yes. In a great democracy, the answer should obviously be no.

To Americans who assume the detainees all were on the team that slaughtered 3,000 innocents in New York and Washington, and thus don't deserve any consideration, a reality check: Guantánamo certainly is home to some men with al-Qaeda links - but also to Taliban fighters and men guilty of nothing more than being caught up in the turmoil of a war zone. The courts' wise directive is to establish procedures that fairly separate one from the other.

But the official reaction to the courts' oversight is deeply troubling.

Attorney General John D. Ashcroft made this amazing claim: "Intrusive judicial oversight and second-guessing of presidential determinations... can put at risk the very security of our nation in a time of war." And you thought the nation had established the principle right of judicial review, oh, about 201 years ago. Once again, it's clear why Ashcroft needs to leave.

It's also troubling to know Bush tapped White House counsel Alberto R. Gonzales to replace Ashcroft. For all his legal scholarship, and the inspiration of his personal story, Gonzales was an

architect of the administration's corner-cutting legal stance on handling detainees. These reckless policies, incredibly, have helped turn world opinion against the nation that was the victim on 9/11.

So Gonzales' credibility on the cornerstone issue of upholding the law must be tested fully as part of the Senate confirmation process.

Whatever Gonzales' fate, the Bush administration must right the course of justice at Guantanamo Bay.