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## **Judge questions role in detention rulings**

A federal judge involved in Guantánamo Bay cases expressed doubts about trying to 'referee' the military system of detentions in the war on terrorism.

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WASHINGTON - A federal judge handling petitions from nine Guantánamo Bay detainees challenging their confinement signaled his reluctance Thursday to intervene in the military system for imprisoning enemy combatants.

"Do we want the judiciary to review whom to target and detain? Did the military have enough information? On a constant basis, we could be reviewing the progress of a war," warned U.S. District Judge Richard Leon, as he sharply questioned defense and government attorneys.

When Barbara Olshansky, representing some of the detainees, said judges needed to rein in the executive branch's "broad, unfettered discretion" in declaring people "enemy combatants" and holding them at the prison camp in Guantánamo Bay, Cuba, Leon sounded unconvinced.

"Is it the province of the judiciary to step in and referee this?" Leon said. He added that he knew of no case in which courts have been injected into an analysis of the intelligence that was a basis for detention."

### **HABEAS CORPUS**

At issue before Leon is whether to grant the Bush administration's motion to dismiss the habeas corpus claims of the nine detainees. Six of the detainees are Algerians captured in Bosnia, where they were plotting to attack the U.S. Embassy, according to U.S. intelligence reports.

Defense attorneys complained that some of the evidence used against the detainees resulted from statements made after captives were abused. They also told the judge that the "status review tribunals," set up at Guantánamo to give detainees a chance to show they are not enemy combatants, did not deal seriously with claims of mistreatment.

Asked by Leon if a detention would be illegal if it were based solely on evidence gathered by torture, Brian Boyle, a Justice Department lawyer, said that if the tribunals determine that evidence of questionable provenance were reliable, nothing in the due process clause [of the Constitution] prohibits them from relying on it."

### **BROAD DEFINITION**

Another federal judge, Joyce Hens Green, is overseeing the claims of 54 other detainees. In a similar hearing Wednesday, Green expressed her skepticism of the broad definition that government lawyers gave to "enemy combatants" -- any foreigner providing aid to terrorist groups anywhere in the world.

Judges Green and Leon may decide whether the review tribunals, which are not legal proceedings, comply with a Supreme Court ruling in June by giving detainees a fair chance to make their case.

Boyle said the tribunals are adequate, and that detainees should not have access to classified information used against them.

Defense lawyers say the tribunals are a legal farce and argue that the Supreme Court cleared the way for detainees to make their claims in federal court.

The Associated Press contributed to this report.