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When The C.I.A. Played by The Rules

Milt Bearden (op-ed)
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TODAY the Supreme Court justices are expected to debate whether they will hear a case involving a Yemeni named Salim Ahmed Hamdan, who is accused of being Osama bin Laden's driver. A federal appeals court found that Mr. Hamdan, who was captured in Afghanistan in 2001 and is being held at Guantanamo Bay in Cuba, was not entitled to the protections of the Geneva Conventions; he has appealed to the high court.

If the court does not choose to review the appellate court's decision, and then overturn it, America's national security will be endangered. I say that based on my experience as the senior American intelligence officer during the final three years of the Soviet occupation of Afghanistan (1986 to 1989). And I also feel that our intelligence agencies and military commanders should make clear to the Bush administration that our country's most fundamental commitments of humanitarian treatment have long been extended to the Afghan battlefield.

The policy of three presidents -- Jimmy Carter, Ronald Reagan and George H. W. Bush -- was that both the Afghan mujahedeen insurgents we supported and their Soviet adversaries would be treated within the precepts of the Geneva Conventions when taken prisoner. I can state without reservation that the United States used its influence consistently to promote that policy -- with overwhelmingly positive results.

When in Pakistan, I oversaw America's covert support to the Afghan resistance that had begun in December 1979. Throughout that war, countless thousands of Afghan insurgents fell into the hands of Soviet forces; a far smaller number of Soviet soldiers were taken prisoner by the Afghan irregulars. I urged the Afghans, the Pakistani officers who supported them, and the politicians on both sides of the "zero line" (the Afghan border with Pakistan) that all combatants taken prisoner deserved the protection of the Geneva Conventions. My most effective argument was founded on reciprocity -- that the treatment of prisoners generally reaches symmetry in any war.

The Afghan war was exceptionally brutal, with more than a million Afghans killed, a million and a half wounded, and three million more driven into exile by the Soviet invaders (who had 15,000 of their own killed). Early in the conflict, the Afghans were brutal to their prisoners, using them as beasts of burden and objects of amusement in traditional knife play; the Soviets responded in kind. But as American involvement deepened, the Afghans were persuaded to change that behavior; at the same time, the Soviet troops, too, began treating their prisoners in accordance with international protocols.

One incident in particular drives home the wisdom of this policy. In early August 1988, I was informed that a Soviet Su-25 ground attack aircraft had been brought down, lightly damaged, that day by anti-aircraft fire in eastern Afghanistan. Was I interested in "buying" it?

I was delighted. An Su-25, a superb plane often called the Frogfoot, would nicely augment the equipment the United States had been collecting from the Afghan battlefield over the previous decade. After a little haggling, I agreed to give the Afghan guerrillas eight Toyota pickup trucks and a few rocket launchers in exchange. Almost as an afterthought, the Afghans told me they had also taken the pilot, a silver-haired colonel. Was I interested?

I was, indeed, interested. I remembered that just after I arrived in Pakistan, I was shown a photograph of a Soviet pilot in a silver flight suit, up to his waist in snow, skin burned by the relentless sun, with a bullet hole in the side of his head. His Tokarev semi-automatic pistol was still clutched in his hand. He had killed himself rather than be captured by insurgents. Back then, Soviet pilots had it particularly rough when captured.

I had made it clear from that moment that American policy was that captured pilots be treated as prisoners of war under international agreements, and that I would offer rewards for any pilots used in prisoner exchanges, repatriated to the Soviet Union, or, if they so desired, resettled in the West.

I threw in another couple of Toyotas and the pilot came with his downed aircraft in a sort of package deal. The colonel was handed over to the Pakistanis -- not wanting to create an incident, I stayed clear of him, though I did make sure he knew that a condominium in Phoenix, or wherever, was an option open to him. He eventually chose to return to the Soviet Union, where he was hailed as a national hero. Part of the swap, though, was the extraction of certain guarantees from the Soviet commanders that their treatment of Afghan prisoners would reach "symmetry" of a sort with the treatment of that pilot.

The story didn't end there, however. The next time I saw that colonel he was on TV, helping beat back the 1991 coup against Mikhail Gorbachev. He soon became Boris Yeltsin's vice president, then turned on Mr. Yeltsin in 1993. His name is Aleksandr Rutskoi, and he remains a voice for democracy and one of President Vladimir Putin's leading critics.

There are two salient points here. First, the present war in Afghanistan must be seen as part of a struggle that has been under way for more than a quarter-century. The Afghan insurgents themselves are not likely to distinguish to any large degree the differences between being taken prisoner by the Soviets in Mazar-i-Sharif in 1985 or by the Americans in the same tortured city in 2005.

The second thing being missed, or more likely ignored, is that there was an American policy toward insurgents taken prisoner by the Soviets in Afghanistan during the Soviet occupation. That policy was to urge both sides toward accepting that the Geneva Conventions applied, and to reach a point where each side treated its prisoners within established rules. In the case of Colonel Rutskoi, a graphic point was made to both sides.

It is a point that has become muddied in the Hamdan case. The issue is not whether Mr. Hamdan is a Qaeda terrorist, but whether as a captive of the United States he should be treated under the traditional rules of the Afghan conflict -- that is, under international norms. A unilateral change in those rules dictated by America -- the latest in the line of foreign powers to find themselves in Afghanistan -- is not only unseemly, but would also put our troops there and elsewhere in the struggle against terrorism in harm's way.

The questions of applicability and enforcement of the Geneva Conventions posed by the Hamdan case should not go unanswered by the Supreme Court. We are a better nation than that.