



## Opposing view: We're still at war

Don't second-guess the military; detainee law strikes right balance.

By Richard Samp

Establishing procedures for detaining enemy combatants is a delicate balancing process. On the one hand, reasonable people should be concerned by the possibility that a handful of the men being detained at Guantanamo Bay, Cuba, never actually took up arms against the United States, and thus there needs to be a procedure for identifying the innocent. On the other hand, reasonable people recognize that we are still at war, and thus we need to ensure that we do not adopt legal procedures that interfere with our ability to wage that war.

The president and Congress have arrived at what they deem the proper balance. They created a [Combatant Status Review Tribunals](#) system that allows detainees to protest their designation by the military as enemy combatants. Every Guantanamo detainee has been afforded a CSRT proceeding, and a sizable number of them won their cases.

Moreover, Congress adopted a statute that permits those unhappy with their CSRT verdicts to retain outside counsel and appeal their cases to the federal courts in Washington, D.C. Many such cases are pending in the lower courts, so those who complain about the fairness of their CSRT proceedings are having an opportunity to air their grievances.

But none of that is good enough for the detainees and their lawyers. They are asking the Supreme Court to second-guess the balance struck by the other branches of government and to grant the detainees the full panoply of rights granted to U.S. residents by our criminal justice system. Such rights have never been accorded to military detainees in past wars, and they far exceed anything contemplated by the Geneva Conventions.

The Supreme Court justices should decline this invitation to appoint themselves as military strategists. The U.S. military, supported by both Congress and the president, has determined that American soldiers cannot be as effective in carrying out their combat missions if they will now also be asked to document the circumstances of every capture to the extent necessary to meet the rigors of habeas review.

There is no basis in history, law, or common sense for the justices to second-guess that determination in a field in which they lack any expertise.

*Richard Samp is chief counsel of the [Washington Legal Foundation](#), a public interest law firm that filed a Supreme Court brief supporting the government's position on behalf of a group of retired generals and admirals.*

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