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Judgment at Guantanamo

Editorial
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JUST AS the US commitment to democracy is on trial in Iraq as that country ponders its new constitution, this nation's commitment to justice is on trial at Guantanamo Bay. Military officers there are preparing to resume war crimes trials of detainees from Afghanistan in which the accused are denied their basic rights under the Geneva Conventions -- the same rules that protect US troops if they are captured by hostile forces.

Last month a three-judge federal appeals court panel -- including Supreme Court nominee John Roberts -- unanimously approved the structure and ground rules of the trials, overturning a decision by federal District Court Judge James Robertson last fall that had halted the Guantanamo proceedings.

Robertson had ruled that the "commissions," as the military is calling them, violate the Geneva Conventions, the Constitution, and the Uniform Code of Military Justice. His ruling reflected the views expressed in a brief filed by several retired US generals and admirals, who fear the consequences to future American prisoners in enemy hands if the United States rejects the Geneva rules.

Judge Robertson rightly found the Guantanamo commissions deeply flawed on procedural grounds, not least because the prisoners -- deemed "enemy combatants" by President Bush -- were not given the opportunity of a hearing under the Geneva Conventions to claim the protected status of prisoners of war.

Even the military's own prosecutors apparently found fault with the commissions. This week The New York Times published excerpts from leaked e-mails written in March 2004 by two military prosecutors that accused the Pentagon of stacking the deck against detainees in the proceedings.

In the e-mails, one prosecutor, Captain John Carr of the Air Force, reported that the chief prosecutor had said commission members were "handpicked" to guarantee convictions. Carr's e-mail also said he had been told that any exculpatory evidence for detainees would probably be among the 10 percent of documents that the Central Intelligence Agency was withholding for security reasons. The chief prosecutor at Guantanamo, who has since retired, denied the charges, and the Pentagon's inspector general has said they are unfounded.

But these charges deserve a hearing in Congress, since they go so directly to the question of whether the Guantanamo commissions will be seen by the rest of the world as fair tribunals or totalitarian-style show trials. It is quite likely that at least some of the detainees did engage in terrorism or war crimes. The United States should prove that in trials that meet US and international standards.