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Guantanamo Blues

Editorial
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IN THE LEGAL MORASS dogging the U.S. prison at Guantanamo Bay, the administration is caught in a dilemma of its own design. Nobody really, legally checked to see if the men hauled from Afghanistan and Iraq and into cells in Cuba qualified as prisoners of war. President Bush just said they didn't, calling them "enemy combatants."

So when one of the inmates facing the specially rejiggered military commission questioned the proceedings in federal district court, the judge mostly agreed with him. If he is a POW, he must be tried by court-martial; if he is not, he may be tried another way; if there is any doubt, it's back to court-martial.

"The president is not a 'tribunal,'" wrote U.S. District Judge James Robertson in his decision last week in the case of Guantanamo inmate Salim Hamdan. Tribunals are military hearings to determine a foreign prisoner's legal status. They must be "competent" to be legal, which means the people sitting on them know the law and weigh evidence in the usual ways, not deciding things based on one man's say -- president or no.

As for the commissions, their rules are so vague as to make a fair trial impossible. There is no clear process for appeal, what types of evidence are acceptable is still being debated and the defendant does not always have the right to be in court or to face his accusers. So even if a tribunal finds Mr. Hamdan not a POW, he ought not to be tried by such a commission.

Administration lawyers have argued in this and other detainee cases that the president is all-powerful in war.

They say he can declare U.S. and foreign citizens subject to indefinite detention without charges. They say he can choose not to follow any ratified treaty, such as the Geneva Conventions.

That's just wrong. Treaties that are ratified are absorbed into U.S. law -- and though the president has wider latitude when the country is at war, Congress so far has not formally declared war.

The administration says it will appeal this ruling. It would better serve the country by instead applying its well-tempered codes of military justice and getting on with the job of dealing with these prisoners.