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## Another Blown Case?

Editorial  
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THE DEATH penalty case against accused Sept. 11 conspirator Zacharias Moussaoui has barely survived the government's latest bout of incompetence. In a blatant violation of a court order, a Federal Aviation Administration lawyer working on the case sent key aviation witnesses a transcript of the government's opening statement, along with her comments on it. This led U.S. District Judge Leonie M. Brinkema to exclude those witnesses -- potentially crippling the prosecutors' case for execution of the only person to face trial for the attacks on the Pentagon and the World Trade Center. On Friday, Judge Brinkema revised her order, allowing the testimony of aviation witnesses untainted by the misconduct. So the case will now limp forward.

Americans opposed to capital punishment, as we are, have little reason to regret this development. Mr. Moussaoui already has pleaded guilty and faces life in prison, which is the sentence he should get. While he is by his own admission an al-Qaeda operative sent here to do America harm, his links to the attacks -- which took place after he was in custody -- are weak.

This case nevertheless joins a line of big terrorism prosecutions marred by government misconduct, overzealousness, hyping of charges or just plain ineffectiveness. A conviction in Detroit had to be set aside because of prosecutorial misconduct. The government brought spectacular charges against accused Islamic Jihad activist Sami al-Arian, only to see a jury reject many of them -- and convict on none -- after a lengthy trial. Then-Attorney General John D. Ashcroft announced the arrest of Jose Padilla with great fanfare as the foiling of a plot to detonate a radiological "dirty" bomb; after holding him for years as an enemy combatant, the government indicted him for far lesser matters. Mohamed Qahtani, the Guantanamo Bay inmate the government has labeled the 20th hijacker -- when it wasn't busy making the same claim about Mr. Moussaoui -- was subjected to such abusive interrogation that he probably cannot face trial at all.

More generally, the military still hasn't managed to try a single person at Guantanamo before its much-vaunted commissions, whose main selling point was their efficiency. More than four years after the Sept. 11 attacks, the United States lacks a stable, predictable system for trying accused terrorists.

Prosecuting terrorists isn't easy, as Mr. Moussaoui's trial has repeatedly illustrated, but much of this is the Bush administration's fault. The administration failed to work with Congress to create viable legal structures to handle these cases, proceeding in whatever way seemed most convenient in any given situation. The results are abysmal. And, ironically, they undermine the case for the more secretive military trial procedures the government is trying to create. If authorities fail so often to play by the rules in the relatively open federal court system, it's hard to believe their behavior will be better when the spotlight is turned off.