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## **Sins of Commissions**

Editorial  
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THE SUPREME COURT hears arguments tomorrow in perhaps the most important case of the term -- a case that, had the Bush administration acted responsibly at any time in the past 4 1/2 years, would not even be in court.

The case is a challenge to the military commissions the administration has set up at Guantanamo Bay, Cuba, to try war-crimes suspects. It poses a bewildering array of difficult legal questions: Are the commissions legal? What procedural rights must they guarantee to comply with statutes, treaties and the Constitution? After a congressional move to strip the courts of jurisdiction over litigation from Guantanamo, does the court even have the power to hear this case? But these questions confront the justices only because of the administration's insistence on pursuing a strategy that has failed in all respects.

The administration dramatically announced after Sept. 11 that it planned to revive a form of military trial not used since the World War II era. The idea was to achieve swift justice unencumbered by the niceties of trial in American federal courts. After all, as the case of Zacarias Moussaoui has since vividly illustrated, trials of al-Qaeda figures can test the capacity of the American civilian justice system. The administration was right that some alternative form of military trial for accused terrorists captured abroad was essential.

The military could have turned to a proven method by which it conducts trials every day: the general court-martial. Had the administration gone to Congress and adjusted the court-martial for the task at hand, it would have benefited from a system in which military lawyers are already adept. It also would have received the blessing of the legislature for whatever deviations from the usual rules might have been necessary.

Instead, the military sought to design a new system from scratch. In doing so, it has bungled. The commission rules have shifted constantly. A legal cloud has hung over its entire process. It has risked genuine unfairness. It has undermined the prestige of American justice. And, ironically, it has moved at a glacier's pace, having successfully tried not a single person to date -- thereby defeating its entire purpose. Even if the administration prevails at the high court this time, the problems will not go away. The system is a disaster, and it needs revamping.

More than four years after Sept. 11, it is intolerable that America has no viable mechanism for trying al-Qaeda operatives. The masterminds of the attacks, Ramzi Binalshibh and Khalid Sheik Mohammed, are in U.S. custody, yet justice for them is not even on the radar screen. If American troops catch Osama bin Laden or Ayman al-Zawahiri tomorrow, the government has no means of bringing them to justice. Whatever the court decides on the law, the administration needs to fix this stillborn system.