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EDITORIAL

Photographs and Kangaroo Courts

We do not envy President Obama as he tries to undo George W. Bush's illegal and shameful detainee policy.

Last week, Mr. Obama faced protests from some of his top generals, and more attacks from Republicans in Congress, as the government got ready to release photographs of soldiers abusing prisoners in Afghanistan and Iraq. Members of both parties decided there was political gold to be mined in complicating the president's efforts to shut down the Guantánamo Bay prison.

But that does not change the fact that Mr. Obama was wrong when he flip-flopped and decided to resist orders by two federal courts to release the photos. We fear he is showing the same lack of resolve when it comes to Mr. Bush's kangaroo courts — the tribunals at Guantánamo that Mr. Obama denounced passionately and frequently during the 2008 campaign.

On Friday, the president said he would seek a further continuance in several cases before the tribunals. And he proposed changes that would make the commissions' procedures a less outrageous miscarriage of justice: among them, banning testimony obtained through abuse and torture; tightening rules on the admission of hearsay; and expanding prisoners' access to counsel.

Unfortunately, that is not enough. The entire edifice must be scrapped and the laws that long governed military and civilian criminal trials put back in force.

We do not object to convening military tribunals to judge and punish crimes committed in war. That is a well-established part of American and international military justice. The problem is that these tribunals, unlike traditional ones, did not just cover prisoners captured on the battlefield. They covered anyone whom Mr. Bush declared beyond the reach of law with the preposterous claim that the whole world is now a field of battle.

Indeed, most Guantánamo prisoners facing the tribunals were captured far from any real battlefield, including Khalid Shaikh Mohammed, the self-proclaimed mastermind of 9/11, and other top terrorism suspects.

These prisoners should be tried in civilian criminal courts under federal antiterrorism

statutes. We are pleased that Mr. Obama envisions doing that in some cases. Republicans like to mock the notion of trying terrorists as criminals, but that is what they are. Treating them as warriors not only demeans civilian and military justice, but it gives terrorists the martyrdom they crave.

Just as Mr. Obama was wrong to reverse field on the military tribunals, he was wrong to do so on the release of photographs showing American soldiers abusing prisoners in Iraq and Afghanistan in ways reminiscent of the crimes of Abu Ghraib. Federal district and appellate judges have ordered the government to release the pictures, and Mr. Obama initially said he would.

But last week, he changed his mind, offering a jumbled set of explanations including his fear of inflaming anti-American sentiment and jeopardizing American soldiers. We share that concern, but these pictures will come out — through the courts or through the press. It is better for those same soldiers for Mr. Obama to release them, while declaring how he plans to change policy to ensure that these abuses are never repeated.

It was particularly distressing to hear Mr. Obama echo Mr. Bush by saying that releasing the pictures would not add “to our understanding of what was carried out in the past by a small number of individuals.” This was not the fault of a few individuals. It was widespread, and systemic, the result of policies set at the highest levels of the Bush administration.

Mr. Obama was elected in part because of his promises to correct these lawless policies. He must create clear rules to deal with prisoners. And there must be a full accounting of what went so horribly wrong and how. Otherwise, Mr. Obama risks turning Mr. Bush’s mistakes into his own or, in the case of the photographs, turning Mr. Bush’s cover-up into his own. More important, he risks missing the chance to make sure the misdeeds and horrors of the Bush years are never repeated.

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