

Tribunals are likely to face legal appeals

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Military justice for foreign terrorism suspects is now one option under President Bush's order issued late Tuesday, but the exact shape of the tribunals he authorized to decide their cases is an open question.

The order covers admissibility of evidence and says a defendant may be convicted by less than a majority of the military commission that hears the case. The order allows for guilty defendants to be jailed or put to death.

It permits review of the tribunal's rulings, including sentencing, by the president or his designee, the defense secretary. The order also says the defendant would have no recourse to the U.S. court system or to any international tribunal.

"It's a delicate balance between civil liberties ... and also being able to get at people who may create a danger just in being tried in the U.S.," said Nashville lawyer David Raybin, citing the potential for retribution against jurors in a civilian trial of terror suspects.

But the mechanics of the system outlined in the president's order aren't spelled out in detail. And even where the order speaks on an issue, legal wrangling is almost a certainty. One area of possible appeal is the provision allowing review of the tribunal's rulings, Raybin said.

Tennessee Attorney General Paul Summers, who is a staff judge advocate and colonel in the Tennessee Army National Guard, also predicts litigation. Summers supports Bush and what he's doing, but said it was very likely that the president's order would be scrutinized and challenged in court because of concerns over defendants' rights.

In an interview with the *Denver Post* published on Nov. 8, attorneys Neal Richardson and Spencer Crona cited these advantages of tribunals: denying suspected terrorists the opportunity to use public trials as a stage to advance their causes; preventing supporters from using new terror attacks as a tactic to free suspects from custody; and the opportunity for military interrogation of foreign suspects. There's no right to remain silent or right to an attorney in military tribunals, the two said.

On the other hand, a civilian trial offers advantages because of its truth-seeking function and because of the legitimacy that a trial's safeguards and procedures confer to its outcome, said Allison Danner, who teaches public international law and criminal law at Vanderbilt University Law School.

"If we're fighting to preserve our freedoms and rights, we should use our public legal system," she said.

Also, she said, some observers believe that terror suspects should be tried in international courts, both to add legitimacy and to allay fears of those who believe that the United States couldn't give suspects a fair trial in the emotional aftermath of Sept. 11.

The United States last used a military tribunal to try German saboteurs who sneaked ashore in New York and Florida in 1942. The trial was secret, and conviction and execution for six saboteurs were swift. The U.S. Supreme Court upheld the proceeding, but under terms that lawyers said might not protect the White House from a constitutional challenge now.