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**HEADLINE:** Bush Defends Secret Tribunals for Terrorism Suspects

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**BODY:**

President Bush told federal prosecutors yesterday that secret military trials for some foreign terrorism suspects could help prevent U.S. legal protections from being used to undermine national security.

Bush is facing complaints from Capitol Hill that he is seizing too much power by establishing the military tribunals and installing himself as the sole arbiter of who will be tried under that system.

"We're an open society, but we're at war," Bush told a conference of U.S. attorneys. "The enemy has declared war on us, and we must not let foreign enemies use the forums of liberty to destroy liberty itself. Foreign terrorists and agents must never again be allowed to use our freedoms against us." Bush used his 18 minutes of remarks to offer a forceful defense of administration policies being challenged on the grounds that they abridge civil liberties. Bush put himself firmly behind the techniques of his Justice Department, which is using immigration laws to detain and question noncitizens, some of whom have peripheral and nonexistent ties to the Sept. 11 attacks.

The president declared that laws "are being enforced fairly and in full," adding, "We will act with fairness, and we will deliver justice, which is far more than the terrorists ever grant to their innocent victims."

Administration officials said Bush's fiery remarks were designed partly as a signal to lawmakers that when they attack Attorney General John D. Ashcroft, they are attacking the president.

Bush's executive order on military tribunals, signed Nov. 13, allows secret trials for foreigners who are charged with committing, threatening or aiding terrorist acts. He said yesterday that "non-U.S. citizens who plan and/or commit mass murder are more than criminal suspects."

"They are unlawful combatants who seek to destroy our country and our way of life," Bush said. "And if I determine that it is in the national security interest of our great land to try by military commission those who make war on America, then we will do so." The prosecutors applauded.

The Defense Department's General Counsel's Office, with help from the White House and the Justice Department, has been working through thorny legal and practical questions to develop tribunal procedures.

Until now, questions about the tribunals and civil liberties concerns raised by some members of Congress have been put to the attorney general. But the administration is now having the Defense Department take the lead on issues surrounding the tribunals, because the Pentagon will prosecute any cases.

The procedures being developed remain closely held. Appearing before an American Bar Association conference yesterday, Pentagon General Counsel William J. Haynes said the Pentagon's 6,000 lawyers were inundated with new issues after the terror attacks and the war in Afghanistan, but he said little about how the tribunals might be conducted.

"The regulations will flesh out a lot more what the legal authorities of the commissions will be," said White House National Security Council lawyer John Bellinger at the same legal gathering. He said that critics have been reading too much into the president's order and that he expects the tribunals to be used sparingly.

"They are still thinking their way through it," said one lawyer familiar with the legal issues.

Among the key issues is how to define the crimes themselves: Will the military have to prove specific war crimes by an al Qaeda member? Or will mere knowing membership and participation in a terror organization be sufficient for conviction?

Pentagon lawyers will have to devise ways to protect the safety of witnesses, judges and prosecutors from revenge from terrorist groups affiliated with the accused. Doing so may involve shielding some of their identities not only from the public, but also perhaps from the defendants themselves, something not done in civilian courts, lawyers familiar with the issues said. At the same time, they said, defendants must be given enough information to be able to challenge the evidence.

The Pentagon attorneys must also consider where tribunals would be held. For security reasons, government lawyers have considered conducting them aboard aircraft carriers, or at the U.S. naval base at Guantanamo Bay, Cuba.

While the lawyers wrestle with questions of logistics, safety and fairness to defendants, it is the president who will decide the most basic issue: who will face tribunals.

Bush will decide whether tribunals will be used only to try people captured abroad, or

whether they will also be used to try suspected terrorists apprehended here, something that has already raised concern among civil liberties groups. Bush may have to weigh constitutional concerns against the need to subject like cases and defendants to the same justice.