

The New York Times

NEW YORK, FRIDAY, NOVEMBER 30, 2001

Page A-1

Groups Gird for Long Legal Fight On New Bush Anti-Terror Powers

By WILLIAM GLABERSON

The Bush administration's aggressive expansion of the government's powers to arrest and prosecute people in fighting terrorism has stirred a legal battle that could last many years and redefine the powers of the executive branch, lawyers and leaders of civil liberties groups say.

The groups, which range across the political spectrum, say they have found serious constitutional flaws in President Bush's actions and are preparing a variety of legal challenges.

Attorney General John Ashcroft has maintained that civil rights have never been threatened by the administration's actions, which include the arrests and interrogations of hundreds of people after the Sept. 11 terrorist attacks, the authorization of military tribunals to try terrorism suspects and efforts to interview 5,000 young Muslim men about their possible knowledge of terrorism.

"I have yet to be informed of a single lawsuit filed against the government charging a violation of someone's civil rights as a result of this investigation," Mr. Ashcroft said

on Tuesday.

But such lawsuits are coming soon, lawyers and leaders of some of the groups said. In several interviews, they outlined a process now beginning across the country, in which the political debate about the administration's actions is being transformed into precise legal arguments.

Bill Goodman, legal director of the Center for Constitutional Rights in New York, said that his group, which grew out of legal efforts to defend civil rights protesters in the 1960's, is planning to challenge the executive order signed by President Bush on Nov. 13 allowing special military tribunals to try foreigners charged with terrorism. Mr. Goodman said he was discussing the possible challenge with lawyers representing some of those likely to face charges.

Mr. Bush's order, he said, has effectively suspended the writ of habeas corpus, a centuries-old legal procedure protecting citizens from being held illegally by the government. No president has the right to do that

Continued on Page B7

THE LEGAL ISSUES

Groups Gird for Fight On Antiterror Powers

Continued From Page A1

without the approval of Congress, the center's lawyers argue.

"My job is to defend the Constitution from its enemies," Mr. Goodman said. "Its main enemies right now are the Justice Department and the White House."

Timothy Lynch, director of the criminal justice project of the Cato Institute, a group often associated with conservative causes, said he was particularly concerned with the power the president's order gave officials to detain noncitizens without court approval.

"If the president can suspend one constitutional principle today," Mr. Lynch said, "the danger is he can suspend others tomorrow." He said Cato would most likely file friend-of-the-court briefs siding with those challenging the military tribunals. The Cato briefs would emphasize its concern with the power to detain noncitizens.

Mindy Tucker, a spokeswoman for the Justice Department, said such legal challenges would very likely fail. "We do not believe our system of justice prevents us from protecting people's constitutional rights and protecting American lives," Ms. Tucker said.

In the interviews, lawyers said they were studying century-old Supreme Court rulings and materials dealing with the drafting of the Constitution as they formed arguments, and outlined a broad range of legal strategies to attack many actions by the administration since Sept. 11. Elliot M. Minberg, legal director of the People for the American Way Foundation, a Washington-based liberal group, said that one possible tactic would be lawsuits under the Freedom of Information Act to press for more disclosure by the government

about the people it has detained.

Irwin H. Schwartz, a Seattle lawyer who is president of the National Association of Criminal Defense Lawyers, said his organization of 30,000 lawyers was developing a strategy for expected challenges to Mr. Ashcroft's policy permitting the monitoring of some conversations between lawyers and their clients.

"What the attorney general has done here is the equivalent of putting an F.B.I. agent's ear to the confessional," Mr. Schwartz said. Officials have argued that they have many safeguards to ensure that monitoring does not violate any rights.

Several lawyers said they were focusing on the president's order establishing the military tribunals, which would give defendants many fewer rights than are available in civilian trials.

Steven R. Shapiro, legal director of the American Civil Liberties Union, said the group had concluded the president was, in effect, making law by authorizing the military tribunals and providing the procedures for trials in them. Mr. Shapiro said the lawmaking role was reserved for Congress under the Constitution and argued the president's action was a violation of the principle of separation of powers.

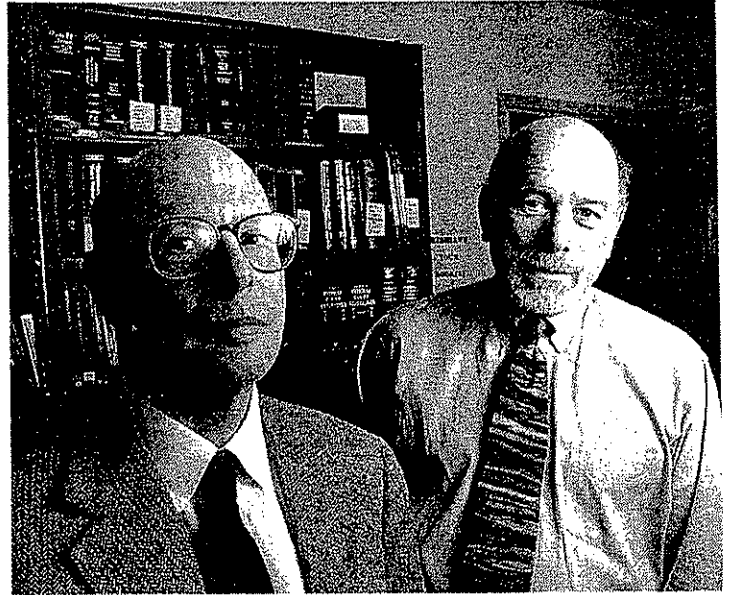
"They are circumventing Congress," he said. Government officials have argued that the president was authorized to take the action because of his powers under the Constitution as commander in chief. Lawsuits could compel the courts to balance those powers against that reserved to the Congress.

As they are planning challenges to the military tribunals, several lawyers said they have begun to focus on the president's effort to limit the rights of appeals in the tribunals.

Michael Ratner, a lawyer at the Center for Constitutional Rights who is working on legal strategies, said he had focused on whether, by trying to limit appeals' rights, the president had effectively repealed the constitutional guarantee of the right to bring habeas corpus proceedings.

Such proceedings are suits that force the government to explain whether people are being held lawfully. A person contesting the power of a military tribunal would do so by filing such a proceeding.

The Constitution grants the right to such proceedings, but permits them to be suspended "in cases of rebellion or invasion."



Chester Higgins Jr./The New York Times

Michael Ratner, left, and Bill Goodman and their group, the Center for Constitutional Rights, will challenge special military tribunals.



Carol T. Powers for The New York Times

Timothy Lynch of the Cato Institute is particularly concerned with an order that allows noncitizens to be detained without court approval.

The language of the president's order says that people coming before military tribunals "shall not be privileged to seek any remedy or maintain any proceeding" in any court.

But the order did not explicitly suspend habeas corpus, and it is not clear whether the president meant to do so. If he meant to do so, it is not clear whether he had the power.

The constitutional provision permitting the suspension of habeas corpus appears in Article I, which defines the power of Congress. Some lawyers argue that this means only

Congress can suspend the right. The Constitution does not clarify which branch of government has the power.

There is a precedent for suspension of habeas corpus — Lincoln did so during the Civil War — but the Supreme Court has not definitively decided whether the president has the power acting alone.

Mr. Ratner said he was marshaling an argument to try to convince a court that President Bush had overstepped his powers. "We don't believe in one-man rule in this country," he said.

ON THE WEB

The complete Justice Department lists of people detained since the Sept. 11 attacks with names of those charged with federal crimes along with anonymous case descriptions for 548 on immigration matters are available at The New York Times on the Web:

nytimes.com