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Tribunals Need Fair Rules

Editorial
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After a series of judicial defeats concerning detainees at the U.S. naval base at Guantanamo Bay, Cuba, the Bush administration was heartened when a three-judge appeals panel ruled that terrorism suspects can be tried by military tribunals.

Most of the 520 detainees were captured in Afghanistan after the 2001 invasion and designated enemy combatants by the Bush administration, which unsuccessfully claimed they weren't entitled to petition federal courts or to have access to lawyers.

The ruling on July 15 reversed a district court judge whose ruling last November halted the trial of Salim Ahmed Hamdan, a Yemeni driver for Osama bin Laden who was captured in Afghanistan. He is one of four detainees so far charged with war crimes.

U.S. District Judge James Robertson had ruled the military commissions violated the Geneva Conventions, U.S. Constitution, and Uniform Code of Military Justice. Robertson said detainees should be tried by courts-martial like U.S. soldiers.

The three-judge appeals panel - including Supreme Court nominee Judge John G. Roberts Jr. - said that the Geneva Conventions "do not create judicially enforceable rights" that could be the basis of a lawsuit and that congressional action provided Bush all the authority he needed to establish the commissions.

"These people are hybrids," says judicial analyst Andrew Cohen. "The legal system we had before Sept. 11 was not set up to handle somebody who was part warrior, part criminal and part terrorist. Everybody is struggling with new definitions and what rules ought to apply to them."

Trials could resume in 30 days, but Hamdan's lawyer is considering appeal.

We think military tribunals, rather than courts-martial, can be an appropriate vehicle for trying captives accused of war crimes, so long as there are safeguards to protect due process for the accused. The tribunals avoid elevating irregulars to the same status as conventional POWs.

"The issue is whether [the commissions] will be deemed a fair hearing or proper method of trying people we have labeled as illegal combatants," said retired military judge Kevin Barry of Virginia, who thinks Robertson was correct. The commissions resemble those used in World War II, he said, but lack many due-process features of the earlier tribunals.

You can bet the Supreme Court will have to untangle this knot. (Roberts, if confirmed, could not take part in the review.) We think these tribunals can be operated credibly with proper direction from the high court.