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Push on to clarify rights for detainees

Specter wants hearing to establish legal order

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Boston Globe
May 31, 2005

WASHINGTON -- A key Republican senator plans to push Congress to take on the issue of rights and treatment of enemy combatants captured and held indefinitely in the war on terrorism, a step that could bring greater legal order to scores of challenges and accusations surrounding the inmates at the Guantanamo Bay military prison and beyond.

In what would be the first major effort by a Republican to get the GOP-led Congress to establish US detention law, Senate Judiciary Committee Chairman Arlen Specter, Republican of Pennsylvania, has scheduled a hearing in June to launch his effort to create clear due process rules for suspected terrorists who are being held without trial.

"The good news is that if anything were to happen, it would mean that Congress has come alive," said Eugene Fidell, president of the National Institute of Military Justice. "Congress' failure to play a role in any of these issues has been extremely unfortunate and an erosion of their responsibilities. So any signs of life are to be welcomed."

After the terrorist attacks of Sept. 11, 2001, the Bush administration established a sweeping policy that allows the government to hold terrorism suspects -- US citizens and foreigners alike -- without trial for the duration of the war on terror, potentially a lifetime.

Because Congress has never created laws directly addressing procedures and limits on President Bush's power over detainees, the administration's policies have led to years of confusion in the courts. Last year, the Supreme Court ruled that prisoners at Guantanamo Bay could challenge their detention in federal court, but the high court offered few details on how such challenges would proceed.

Federal district judges have reached conflicting decisions on how to handle those lawsuits, including whether detainees have a right to see classified evidence against them. To clarify matters and treat all cases uniformly, Specter is proposing that all detention lawsuits be heard in a secret federal court that now exists only to oversee national security-related surveillance by the government.

Judiciary Committee aides said Specter also plans to review problems that have plagued the military commissions Bush established to try detainees on criminal charges. The commissions were shut down by a federal judge last fall on the grounds that they violated the Geneva Conventions.

"If there are problems, it's a duty of Congress to deal with it," said one Specter aide, who spoke on condition that his name not be used. Specter, receiving treatment for Hodgkin's disease, was unavailable for comment late last week.

But several detainee advocates were cautious about Specter's idea of granting exclusive jurisdiction over detention cases to the so-called "FISA Court" -- named after the federal Foreign Intelligence Surveillance Act, which allows special wiretap warrants to be used against suspected foreign agents.

The FISA Court is convened by regular federal judges, but it meets privately. When considering requests for wiretaps, it hears only from the government because the potential target is not notified that he or she may be placed under surveillance. In its history, the court has rejected just one wiretap application and that wiretap was later approved on appeal.

Michael Ratner, president of the Center for Constitutional Rights, a group which represents Guantanamo detainees, said it would be "outrageous" to send detainee lawsuits to the FISA Court, saying detainees have a right to have their cases heard by regular courts in public.

"It's a secret court that meets in a building in Washington with the shades drawn," he said. "Its existence is already the beginning of an erosion of fundamental constitutional and democratic values. So the idea that they'd put in that court, not just the adjudication of wiretapping, but the adjudication of someone's freedom, is to me very shocking. That is medieval."

However, an aide to Specter, stressing that the idea was in its early stages, said the senator's proposal "would change a lot of what they do" at the FISA Court. In particular, the aide said, it may be possible to have some of the court's proceedings conducted in the open, as long as they don't involve classified evidence that could jeopardize an intelligence source.

That suggestion still troubled Ken Hurwitz of Human Rights First, another group that has closely tracked the legal issues of detainees. While he was not opposed to centralizing all the detention cases in a single court, the proposed change would not solve a fundamental conflict: Justice demands that prisoners be able to see the government's evidence against them.

Specter, a veteran legislator who recently took over the influential Senate Judiciary Committee, has floated the idea of addressing detainee rights in public before, in a little-noticed exchange at the end of an April hearing about the USA Patriot Act.

Addressing Attorney General Alberto Gonzales, Specter declared that Congress has "authority under the Constitution to deal with this issue of detentions" and that his committee is "thinking about spelling out" procedures for detentions in greater detail, according to a transcript.

"Our committee has been looking at possible legislation on an expansion of the authority of the FISA Court to be the central court where applications are made" for detention challenges, Specter said. "I'd be interested in your views, Attorney General Gonzales, if you think that would be helpful to have that concentrated in one court so you have a uniform application."

Gonzales replied, "I think it could certainly be useful," but asked to examine any legislation before it became final. Spokesmen for the White House and the Justice Department said last week that the administration has not yet developed any official policy on Specter's idea.

The federal judiciary has struggled with how to handle the hundreds of alleged combatants captured in Afghanistan and brought to Guantanamo, as well as a handful of people arrested within the United States.

From the beginning, Bush has argued that, as commander-in-chief during wartime, he has the power to set detention policy -- even though he acknowledged that the war on terror is unlike any other conflict in history and may last decades.

Republican lawmakers, in control of the House and Senate, proved unwilling to challenge that view, bypassing the chance to create legislation governing the detentions. Last year, the federal judiciary dealt with several detainee lawsuits arguing that Bush has no authority to imprison them, potentially for life, without a trial.

In June 2004, the Supreme Court ruled, 6 to 3, that Congress implicitly empowered Bush to indefinitely hold suspected "enemy combatants" without trial when it authorized the use of military

force against the perpetrators of the Sept. 11 terrorist attacks in New York and Washington. But the court also ruled that detainees were entitled to greater safeguards than they had received.

In response, the military set up hearings in which three officers reviewed the cases of each Guantanamo detainee to see if they should be held as enemy combatants. But detainees were not given a lawyer and could not see all the evidence against them.

Two federal judges have come to opposite conclusions about whether the military's hearings met the standards the Supreme Court established last year. That issue is now before an appeals court.