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McCain Fights Exception to Torture Ban

Ex-POW assails bid to exempt the CIA

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Boston Globe
October 26, 2005

WASHINGTON -- Senator John McCain yesterday warned that a push by the White House to exempt overseas CIA agents from a proposed ban on mistreating prisoners in US custody would exacerbate the problem of detainee abuse by giving interrogators legal authority to torture suspected terrorists.

"I don't see how you could possibly agree to legitimizing an agent of the government engaging in torture," said the Arizona Republican, who survived torture as a prisoner of war in Vietnam. "No amendment at all would be better than that."

McCain went public with his concerns after published reports yesterday that Vice President Dick Cheney met with him to urge changes to his widely supported proposal to outlaw cruel and degrading treatment of detainees by any US official. Cheney suggested exempting CIA counter-terrorism agents working overseas, but McCain balked.

White House press secretary Scott McClellan yesterday declined to comment on Cheney's conversations with McCain. But he insisted the Bush administration opposes torture under any circumstances.

"We do not condone torture, nor would [President Bush] ever authorize the use of torture," McClellan said. "We have an obligation to abide by our laws and our treaty obligations, and that's what we do. That is our policy."

Under law, it is unclear whether the president can authorize CIA interrogators to abuse overseas prisoners in the name of protecting national security. The CIA has been charged with detaining and interrogating "high value" Al Qaeda leaders in secret overseas facilities.

After the 2001 terrorist attacks, the administration crafted a secret legal memo arguing that Bush could authorize aggressive interrogations to protect national security. The controversial memo defined "torture" narrowly as pain that is equal to organ failure and that is inflicted as an end to itself, rather than as a means to obtaining life-saving information.

The administration repudiated the memo in 2004 after it leaked, and said it had never been used. But the White House insists the Constitution gives the commander-in-chief the power to decide how terrorism suspects will be treated.

Human rights activists argue that the president's powers do not allow him to override laws and treaties against torture and other forms of cruel and degrading treatment. The debate is unresolved, resulting in legal confusion.

Cheney's proposed changes to McCain's bill would clear up the confusion -- while opening the door to legalized abuse, critics say. If Congress passes an anti-abuse law that exempts the CIA, the law would constitute, for the first time, clear authorization for the CIA to engage in abusive interrogations to protect national security.

"It will be a major step backwards from where the law currently stands," said Marty Lederman, a former Clinton administration Justice Department official who is now a professor at the Georgetown University law school. "It would make the law worse than it currently is."

The Senate voted 90-9 three weeks ago to attach McCain's amendment to a military appropriations bill, in a bipartisan vote that was seen widely as a rebuke to Bush administration policies following detainee abuse scandals at Guantanamo Bay, Abu Ghraib, and elsewhere.

The measure is not in the House version of the bill. It is pending before a House-Senate conference committee, which has the power to delete, modify, or keep the detainee language.

Lawmakers are due to meet privately today to discuss the detainee issue for the first time. The Senate delegation is led by Ted Stevens, Republican of Alaska, one of nine who voted against McCain's proposal. Yesterday, Stevens said that if the detainee language becomes law, it would jeopardize the lives of clandestine agents.

"I do think we have to take into account -- and that's why I voted against it -- the position of those people who we send into harm's way, in a clandestine way," Stevens said. "What is the standard that applies to them in terms of saving their own lives? . . . I have not seen the vice president's language. I have no solution to it yet. I don't know how to solve it. But I know there's a problem."

McCain responded: "I don't know how you protect your life by torturing somebody. I've never understood that scenario."

McCain's proposal would do two things. First, it would restrict military interrogators to using only techniques authorized in the Army Field Guide, imposing firmer limits on military prisons.

Second, it would prohibit torture and other forms of cruel, inhuman, and degrading treatment of detainees in US custody anywhere in the world. That rule would extend to CIA agents and officials from allied governments.

Several weeks ago, the White House threatened to veto the military appropriations bill should the final version contain McCain's proposal, citing Bush's need for flexibility in setting policy for the treatment of prisoners in the war on terrorism.

But the threat did not deter 90 members of the Senate, including 46 Republicans, from approving the amendment.