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Torture or Coercion?

Sen. John McCain scored a victory in his battle to ban interrogation abuse, but the White House may not be giving up entirely on harsh interrogations.

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Dec. 15, 2005 - Sen. John McCain and President George W. Bush smile a lot at each other for the cameras these days. But there's no disguising their bitter history-or the fact that they are jostling for dominance in the Republican Party. So when Bush welcomed McCain into the Oval Office on Thursday, in a show of support for the latter's bill to ban torture and interrogation abuse, he didn't acknowledge the central drama of the moment: the president had caved in to the senator, big time, in a head-to-head fight that had dragged on for months.

Even so, Bush may not be giving up entirely. NEWSWEEK has obtained a draft of a less-known companion bill sponsored by two Republican senators, Lindsey Graham and Jon Kyl, and Democratic Sen. Carl Levin, in which the administration has won tougher language giving it the right to use information obtained from harsh interrogations overseas.

After weeks of taking a hard stand against the McCain amendment-to the point of vowing to veto the defense-appropriations bill it was attached to-Bush announced Thursday that he was accepting the senator's clear language making it illegal to subject U.S. detainees anywhere around the world to cruel, inhuman or degrading treatment. The bill defines such treatment as anything that violates U.S. constitutional protections.

Bush said that the new law, once enacted, will "make it clear to the world that this government does not torture and we adhere to the international Convention Against Torture whether here at home or abroad." While the administration has repeatedly said it does not permit or condone torture, it has steered clear in the past of defining what torture is, and it has hedged over its interpretation of the CAT.

Bush was, in effect, bowing to the inevitable. Several weeks back, the Senate supported McCain's measure 90-9, giving the senator a vetoproof majority. Then on Wednesday, the House of Representatives approved his language 308-122. The Bush administration won a minor concession from McCain guaranteeing that the CIA or other interrogators accused of abuse would get the right of legal counsel and the option of defending themselves by arguing they were under orders, just as military interrogators have.

Conspicuously absent from the announcement was Vice President Dick Cheney, who has been the point man in opposing the bill. Bush has since made national-security adviser Steve Hadley his lead negotiator with McCain. In an unusual move, Rep. Duncan Hunter, chairman of the House Armed Services Committee, said he would still oppose the bill in conference even though the administration itself-the ones conducting the interrogations-now supported it. Officials close to the negotiations on Capitol Hill had said previously that they believed that the ultraconservative Hunter was acting as Cheney's stalking horse on the bill.

But the Bush administration may still secure something of a victory in the Graham bill. According to an amended draft of the measure being circulated Thursday among the sponsors, Graham has agreed to language that loosens the restrictions on terror evidence that's obtained through "coercive" interrogations that may occur in other countries. Whereas Graham's previous draft had forbidden the use of such evidence-in accordance with standard rules of military justice-the new draft says that it should be barred only "to the extent practicable." The latest bill language also now says that the "probative value" of evidence should be considered-in other words, whether the information is persuasive.

In theory, this would permit U.S. military tribunals to use evidence obtained through torture or abuse in the prisons of other countries. The new Graham draft also adds more restrictions on the rights of terror detainees to sue or launch an action against the U.S. government outside of a narrow appeals process.

Wes Hickman, a spokesman for Graham, said he had no immediate comment on the negotiations. However, a Republican Senate aide who spoke on condition that he would not be named conceded that new language had toughened the bill. "There was a clause in the original bill that said the [tribunals] had to exclude any statements that were the result of torture or coercion. Now that's been changed to a 'consideration' clause that says the tribunal board must take into account the source of the information." He contended the change had been requested by military judge advocates general.

Tara Andringa, a spokeswoman for Levin, said she could not comment while the bill was in conference, and a Kyl spokesman referred all inquiries to Graham's office.