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## Senators Agree on Detainee Rights

Deal Would Allow Some Court Access

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Washington Post

November 15, 2005

A bipartisan group of senators reached a compromise yesterday that would dramatically alter U.S. policy for treating captured terrorist suspects by granting them a final recourse to the federal courts but stripping them of some key legal rights.

The compromise links legislation written by Sen. Lindsey O. Graham (R-S.C.), which would deny detainees broad access to federal courts, with a new measure authored by Sen. Carl M. Levin (D-Mich.) that would grant detainees the right to appeal the verdict of a military tribunal to a federal appeals court. The deal will come to a vote today, and the authors say they are confident it will pass.

Graham and Levin indicated they would then demand that House and Senate negotiators link their measure with the effort by Sen. John McCain (R-Ariz.) to clearly ban torture and abuse of terrorism suspects being held in U.S. facilities.

"McCain's amendment needs to be part of the overall package, because it deals with standardizing interrogation techniques and will reestablish moral high ground for the United States," Graham said.

Such broad legislation would be Congress's first attempt to assert some control over the detention of suspected terrorists, which the Bush administration has closely guarded as its sole prerogative. By linking a provision to deny prisoners the right to challenge their detention in federal court with language restricting interrogation methods, senators hope to soften the administration's ardent opposition to McCain's anti-torture provision -- or possibly win its support.

The Justice and Defense departments have expressed strong support for legislation that would curtail a flurry of civil litigation coming out of the military's detention camp at Guantanamo Bay, Cuba, according to some senators involved in the negotiation. "The truth is, this is something the administration would dearly like," Sen. Jeff Bingaman (D-N.M.) said of the language curtailing detainee access to the courts.

But Vice President Cheney, a major architect of the U.S. anti-terrorism effort, is strongly opposed to any compromise that includes the McCain provision, the senators said. Cheney personally lobbied against McCain's measure to ban abuse and torture, contending that its language was too broad and would prohibit the use of interrogation methods necessary to secure vital national security information. After the Senate approved the measure as part of a defense spending bill, he pushed to exempt the CIA from its provisions.

Now Cheney has turned to House Republican leaders to hold McCain's language back.

"It's fair to say the White House has made the case -- both the president and the vice president -- that the McCain amendment is harmful," acting House Majority Leader Roy Blunt (R-Mo.) said last week.

But there are signs of White House divisions over the detainee issue. President Bush's national security adviser, Stephen J. Hadley, acknowledged Sunday on CNN that he has begun negotiating with McCain on detainee issues. That contrasts with a White House veto threat Sept. 30 that left virtually no room for compromise.

The treatment of detainees has vexed the Bush administration ever since the pictures of abused Iraqi prisoners at Abu Ghraib surfaced a year and a half ago. As the president's approval ratings decline to record lows, Congress has become more assertive in areas of policy it used to steer clear of.

Yesterday, members of the bipartisan commission that investigated the Sept. 11, 2001, terrorist attacks criticized the Bush administration for not adopting standards they recommended for the treatment of captured terrorism suspects. The administration was given a mixed review in a report on the commission's key recommendations designed to help the United States better prepare for and respond to a terror attack.

McCain's provision would establish written guidelines on interrogation methods, while the Graham amendment would reverse a June 2004 Supreme Court decision granting prisoners at Guantanamo Bay access to federal courts under the right of habeas corpus. The Graham amendment would also strengthen Senate oversight over Guantanamo Bay operations.

The Graham provision was tacked on to the annual defense policy bill Thursday night, on a 49 to 42 vote. McCain's amendment was overwhelmingly passed by the Senate last month.

Levin's language would grant any detainee sentenced to death or at least 10 years of prison by a military trial an automatic appeal to the U.S. Court of Appeals for the District of Columbia Circuit. The court would review guilt or innocence and could also determine the constitutionality of the entire process case by case, Graham said. Those sentenced to less than 10 years could petition the appeals court for review.

The Graham measure approved last week grants an appeal to the D.C. Circuit, but under that provision the court may examine only whether a military tribunal followed its own standards and procedures.

Support for Graham's initial amendment last week sparked a search for a compromise that could secure victory for McCain's torture language, negotiators said. Adoption of Graham's amendment persuaded Democrats to seek a deal that preserved some role for civilian courts in the military tribunal process. The insistence that the compromise be packaged with McCain's provision will give the White House a strong incentive to go along, Bingaman said.

The compromise Graham-Levin language would be inserted into the annual defense policy bill expected to be approved by the Senate today. House and Senate negotiators would then work out a compromise defense bill that the senators say must contain the Graham-Levin language and McCain's language on detainee abuse. The final measure would then go to the president.

An administration official briefed on the compromise said yesterday that so far, neither the Justice Department

nor the Defense Department nor the White House has seen a complete package to support, although there are elements to back.

Neither Congress nor the administration wants a veto fight. That dynamic is pushing the drive for a deal that will satisfy both ends of Pennsylvania Avenue.

Cheney spokeswoman Lea Anne McBride said Cheney has done nothing on the issue that is not fully supported by the president. She pointed to a statement Bush made last week, saying that Cheney's lobbying reflected administration views.