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Senate Approves Detainee Bill Backed by Bush

Constitutional Challenges Predicted

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Congress approved landmark changes to the nation's system of interrogating and prosecuting terrorism suspects last night, preparing the ground for possible military trials for key al-Qaeda members under rules that critics say will draw stiff constitutional challenges.

The Senate joined the House in embracing President Bush's view that the battle against terrorism justifies the imposition of extraordinary limits on defendants' traditional rights in the courtroom. They include restrictions on a suspect's ability to challenge his detention, examine all evidence against him, and bar testimony allegedly acquired through coercion of witnesses.

The Senate's 65 to 34 vote marked a victory for Bush and fellow Republicans a month before the Nov. 7 elections as their party tries to make anti-terrorism a signature campaign issue. Underscoring that strategy, the House last night voted 232 to 191 to authorize Bush's warrantless wiretapping program, with GOP leaders hoping to add it to their list of

Detainee Policy

Bush acknowledged the existence of secret CIA prisons abroad Sept. 6, 2006, as he called for the authority to try prisoners by military commissions.

- Analysis: [President Shifts Argument](#)
- Pentagon War Policy: [New Interrogation Rules](#)

CIA'S SECRET PRISONS

Washington Post reporter Dana Priest [reported on Nov. 2](#) that the CIA operates a network of secret prisons where it holds terror suspects. Priest was awarded a Pulitzer Prize on April 17 for [her beat reporting](#) on the CIA and the War on Terror.

- From the Office of the Director of National Intelligence: [Summary of the High Value Terrorist Detainee](#)

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accomplishments even though it has no chance of Senate passage before this weekend's scheduled adjournment. On the final wiretapping vote, 18 Democrats joined 214 Republicans to win passage. Thirteen Republicans, 177 Democrats and one independent voted nay.

Democrats resisted both measures and nearly amended the detainee bill to allow foreigners designated as enemy combatants to challenge their captivity by filing habeas corpus appeals with the federal courts. But Republicans held fast, gambling that Democrats will fail in their bid to convince voters that the GOP is sacrificing the nation's traditions of justice and fairness in the name of battling terrorists and winning elections.

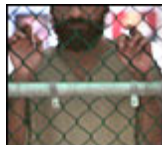
"As our troops risk their lives to fight terrorism, this bill will ensure they are prepared to defeat today's enemies and address tomorrow's threats," Bush said after the vote.

With control of both houses possibly at stake this fall, yesterday's debates were often impassioned and deeply partisan. House Majority Leader [John A. Boehner](#) (R-Ohio) called Democrats "dangerous." [Patrick J. Leahy](#) (Vt.), the ranking Democrat on the Senate Judiciary Committee, said the nation is losing its "moral compass."

The Senate approved the detainee legislation after Bush's allies narrowly fended off five amendments. The vote on final passage drew support from 53

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GUANTANAMO DETAINEES



[Detainee Database](#)

View the largest list of names made public thus far, comprising men whose identities have appeared in media reports, on Arabic Web sites and in legal documents.

TRANSCRIPTS



[President Bush](#) delivers remarks on terrorism, Sept. 6, 2006.

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Republicans and 12 Democrats, while 32 Democrats, one independent and one Republican -- [Lincoln D. Chafee](#) (R.I.) -- voted nay.

Judiciary Committee Chairman [Arlen Specter](#) (R-Pa.) voted for the bill after telling reporters earlier that he would oppose it because it is "patently unconstitutional on its face." He cited its denial of the habeas corpus right to military detainees. In an interview last night, Specter said he decided to back the bill because it has several good items, "and the court will clean it up" by striking the habeas corpus provisions.

The Supreme Court triggered the congressional action by striking down in late June Bush's earlier system for trying suspects in military commissions.

The new bill is designed to legalize military commissions and to clarify interrogation techniques that CIA officers may use on terrorism suspects considered "unlawful enemy combatants," who are granted fewer protections than are prisoners of war. Hundreds of such detainees have been held for several years without trial at the U.S. military base at Guantanamo Bay, Cuba, while others were held at secret prisons overseas.

The new measure, which the House approved 253 to 168 on Wednesday, rejects Bush's earlier bid to narrow U.S. obligations under the Geneva Conventions in the treatment of such detainees. But it grants the executive branch substantial leeway in deciding how to comply with treaty obligations regulating actions that fall short of "grave breaches" of the conventions.

It would bar military commissions from considering testimony obtained through interrogation techniques that involve "cruel, unusual or inhumane treatment or punishment," which the Constitution's Fifth, Eighth and 14th amendments prohibit. The bar would be retroactive only to Dec. 30, 2005 -- when Congress adopted the Detainee Treatment Act -- to protect CIA operatives from possible prosecution over interrogation tactics used before that date.

Yesterday's main drama involved Specter's bid to amend the bill to grant the habeas corpus right to foreign detainees. Habeas corpus appeals -- a legal cornerstone -- allow prisoners to ask a judge to rule on the legality of their detention.

Specter and his allies said the habeas corpus right must apply to all persons -- including noncitizens -- held in U.S. custody. Most other Republicans said foreigners designated by the military as "unlawful enemy combatants" do not deserve habeas corpus protections.

Specter's amendment failed, 51 to 48. Senate Republicans voting for the habeas corpus amendment were Specter, Chafee, [Gordon Smith](#) (Ore.) and [John E. Sununu](#) (N.H.). [Ben Nelson](#) (Neb.) was the only Democrat who opposed the amendment. Four amendments drafted by Democrats also failed, mostly along party lines.

Republicans, especially in the House, plan to use the military commission and wiretapping legislation as a one-two punch against Democrats this fall. The legislative action prompted extraordinarily blunt language from House GOP leaders, foreshadowing a major theme for the campaign. Speaker J. [Dennis Hastert](#) (R-Ill.) issued a written statement on Wednesday declaring: "Democrat Minority Leader [Nancy Pelosi](#) and 159 of her Democrat colleagues voted today in favor of MORE rights for terrorists."

GOP leaders continued such attacks after the wiretapping vote. "For the second time in just two days, House Democrats have voted to protect the rights of terrorists," Hastert said last night, while Boehner lashed out at what he called "the Democrats' irrational opposition to strong national security policies."

Democrats tried to deflect such attacks by focusing on the newly released National Intelligence Estimate, partially leaked on Saturday, which concludes that the Iraq war has become a "cause celebre" for terrorists. But Republicans maneuvered their attacks toward that issue as well.

"The Democrats' jubilation with the national intelligence leak over the weekend underscores just how dangerous I think my friends on the other side of the aisle are when it comes to national security," Boehner said yesterday.

Democrats said they will take the high road. "There will be 30-second attack ads and negative mail pieces, and we will be called everything from cut-and-run quitters to Defeatocrats, to people who care more about the rights of terrorists than the protection of Americans," predicted [Sen. Barack Obama](#) (D-Ill.). "While I know all of this, I'm still disappointed, and I'm still ashamed, because what we're doing here today -- a debate over the fundamental human rights of the accused -- should be bigger than politics."

Democratic leaders stressed that the attacks will not work. [Sen. Charles E. Schumer](#) (N.Y.), chairman of the Democratic Senatorial Campaign Committee, cited polling that he said suggested that matters such as warrantless wiretapping and military commissions are "secondary issues," lagging well behind Iraq in the public's mind. Senate Minority Leader [Harry M. Reid](#) (Nev.) said it is "beyond [his] ability to comprehend" how a member of Congress could be accused of supporting terrorism.

But Greenberg Quinlan Rosner, a prominent Democratic polling firm, tried to raise alarms yesterday with the release of focus group findings that suggest that the attacks would work if not countered forcefully. "Attacks on Democrats for opposing any effort to stop terrorists . . . were highly effective," the pollsters' memo stated.

Under the House surveillance bill, the National Security Agency could conduct electronic surveillance of international communications for up to 45 days without a warrant, but the administration would then have to obtain permission from the secret Foreign Intelligence Surveillance Court and, in most cases, would have to notify lawmakers.

But the congressional intelligence committees could recertify any warrantless wiretapping repeatedly, in 45-day increments, without referral to the court. And restraints on the program could be suspended in the aftermath of a terrorist attack or when the president determines that the country is under "imminent threat." The "imminent threat" provision was added at the insistence of the Bush administration.

Terrorism Bill

The Senate yesterday approved legislation on the treatment and prosecution of terrorism suspects.

QUOTES FROM THE PROCEEDINGS



Sen. Patrick J. Leahy (D-Vt.):

"Why would we allow the terrorists to win by doing to ourselves what they could never do, and abandon the principles for which so many Americans today and through our history have fought and sacrificed?"



Sen. Gordon Smith (R-Ore.):

"Providing detainees with the right to ask a court to evaluate the legality of their detention I do not believe will cost U.S. lives. . . . Permanent detention of foreigners, without reason, damages our moral integrity."



Sen. Jeff Sessions (R-Ala.):

The framers of the U.S. Constitution "didn't intend to provide it for those who are attacking the United States of America. We provide special protections for prisoners of war. . . . But unlawful combatants, the kind we're dealing with today, have never been given the full protections of the Geneva Conventions."



Sen. Lindsey O. Graham (R-S.C.):

Permitting detainees to file habeas corpus appeals "allows a judge to take what has historically been a military function. . . . It impedes the war effort and it is irresponsible, and it needs to stop and it should never have happened."

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