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McCain Names Practices Detainee Bill Would Bar

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Senator Says 3 Interrogation Methods Are Among the 'Extreme Measures' the Plan Would Outlaw

By [R. Jeffrey Smith](#)

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A Republican senator who played a leading role in drafting new rules for U.S. interrogations of terrorism suspects said yesterday that he believes a compromise bill embraced by party leaders and the White House will bar some of the most extreme techniques said to have been used by the CIA.

Sen. John McCain (Ariz.) named three measures that he said would no longer be allowed under a provision barring techniques that cause serious mental or physical suffering by U.S. detainees: extreme sleep deprivation, forced hypothermia and "waterboarding," which simulates drowning. He also said other "extreme measures" would be banned.

McCain's remarks were unusual because public officials involved in the lengthy public debate about U. S. interrogation practices have rarely made specific references to the CIA's actions. Instead, they have made general claims about the need for rough interrogations or a desire to stop abusive behavior.

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.

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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.

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"It's clear we have to have the high moral ground," said McCain, a former POW tortured by prison guards in Vietnam, on CBS's "Face the Nation." "I am confident that some of the abuses that were reportedly committed in the past will be prohibited in the future."

McCain spoke after officials of Human Rights Watch and others pressed him to spell out ways in which the controversial draft legislation would constrain the CIA's actions. The bill, introduced in the Senate on Friday, does not mention specific interrogation methods, causing some experts to say it would leave room for abuses. President Bush endorsed the bill after CIA Director Michael V. Hayden said it meets his agency's needs.

McCain, Sen. John W. Warner (R-Va.), Sen. Lindsey O. Graham (R-S.C.) and their staffs were heavily involved in drafting the bill's language, so McCain's reading of it may carry weight in any court battle over its meaning. Aides said he did not clear his remarks with the Bush administration in advance, and spokesmen for the CIA and the White House declined to say yesterday whether they accept McCain's conclusions.

"We cannot and will not comment on specific interrogation measures," CIA spokesman Mark Mansfield said, adding that the agency will act lawfully. The CIA has asserted unofficially that its most extreme measures were used on only a handful of detainees.

Senate Majority Leader Bill Frist (R-Tenn.), who wants to shepherd the

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detainee bill to congressional passage this week, also declined to give a specific reading of it yesterday. Asked repeatedly on ABC's "This Week" what the legislation would allow, Frist said, "I'm not going to comment on individual techniques," and he condemned doing so.

"No responsible person is going to come in and basically say, 'These are the 10 techniques we use and these are the 10 that are not used,' " said Frist, who is sometimes mentioned as a McCain rival for the Republican presidential nomination in 2008. "It helps the terrorists."

Senate Judiciary Committee Chairman Arlen Specter (R-Pa.) yesterday praised the bill as "a big improvement" over the administration's initial proposals. But he said on CNN's "Late Edition" that he opposes provisions in it that would bar terrorism suspects from challenging their detention or treatment in federal court. "That has to be changed," said Specter, who plans to hold a hearing on the issue this morning.

The proposed legislation does not say what interrogators can do. Instead, it states indirectly, in amendments to the 10-year-old War Crimes Act, that those who cause detainees "severe or serious physical or mental pain or suffering" can be charged with a felony. This includes, according to the bill's definitions, anyone who causes serious physical abuse, a substantial risk of death, extreme physical pain, burns or serious physical disfigurement, or a loss or impairment of "the function of a bodily member, organ, or mental faculty."

The bill would also replace an existing ban on interrogation practices that cause "prolonged" mental pain or suffering with a more sweeping ban on those that inflict "serious and non-transitory mental harm (which need not be prolonged)." This provision would be applicable only to interrogations that occur after the date the legislation is passed -- and thus it would effectively immunize from prosecution CIA interrogators who have inflicted short-term but serious mental harm on detainees.

The White House had preferred to bar questioning that caused "severe" and "prolonged" harm; McCain and his allies sought to obstruct interrogations that caused "almost instantaneous" mental harm. "If the detainee faints, that is not what we were trying to capture," said one of the congressional negotiators, who spoke on the condition of anonymity to discuss sensitive negotiations. "But we wanted to prohibit anything that would cause a lasting effect, or anything that would go up to that line."

The CIA exposed some of the estimated 100 people held at various times in its foreign prison system to temperature extremes, lengthy sleep deprivation and stress positions such as prolonged forced standing, officials said. But the

agency never fully briefed McCain, Graham or their staffs on the interrogations, a circumstance that handicapped the discussions last week.

McCain was nonetheless particularly adamant that the CIA be permanently blocked from using waterboarding, which he regards as torture, even though intelligence officials have said privately that it has not been used for several years. McCain -- who has previously described being beaten and painfully bound by ropes in Vietnam -- said yesterday he recognizes that stress positions could be "important" and that while it "was never our intent" to stop the CIA interrogation program, he wanted to stop the "extreme application" of such techniques.

As lawmakers and officials struggled to find compromise language, they consulted a dictionary Web site's entries for the words "momentary," "temporary," "transitory" and "fleeting," two congressional sources said.

The key to the deal, congressional sources said, was the Senate lawmakers' acceptance of national security adviser Stephen J. Hadley's demand that violations of the ban on serious, non-transitory and not necessarily prolonged mental harm could bring prosecution only for future interrogations. The demand grew out of CIA and Justice Department concerns that interrogators would be exposed to war-crimes charges for their past actions.

Alberto J. Mora -- who opposed the administration's interrogation policies while serving as the Navy's judge advocate general from 2001 until the end of last year -- said in May that "we know the treatment may have reached the level of torture in some instances." Mora's remarks referred to detainees held at Guantanamo Bay, Cuba, and elsewhere.

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