

# GOP Senators Assert Congressional Control Over Detainee Policy

by Edward Spannaus

The White House is threatening to veto the Defense Authorization bill, if it contains a provision being drafted by three key Senate Republicans, which would assert Congress's Constitutional role in defining U.S. policy on detainees and interrogations in the war on terrorism. In a statement issued on July 21, the White House insisted that Congress must not legislate on these matters, over which the Executive branch wrongly claims to have exclusive authority.

At the outset of the so-called war on terrorism, the White House—particularly the office of Vice President Dick Cheney—has insisted that the President has inherent powers as Commander-in-Chief in wartime to ignore or override Congressional enactments (such as the Federal anti-torture law and the War Crimes Act), and also to ignore international treaties (such as the Geneva Conventions) which were ratified by the U.S. Senate.

The three Republican Senators who are urging the Senate and Congress to assert their own responsibility under Article I, Section 8, of the U.S. Constitution, to set rules for captured prisoners, and to regulate the Armed Forces, are: John Warner (Va.), the chairman of the Senate Armed Services Committee; Lindsey Graham (S.C.), a former military prosecutor; and John McCain (Ariz.), a former prisoner-of-war.

In addition to the amendment on detainee policy, a group of Democratic Senators, led by Carl Levin (Mich.), the senior Democrat on the Armed Services Committee, announced on July 21 that they are introducing an amendment to create an independent commission to investigate prisoner abuse and examine the White House policies on detainees. The White House threatened to veto any bill containing this provision.

## What the Senate Hearings Revealed

On July 13 and 14, the Senate Armed Services Committee, of which Warner, Graham, and McCain are members, held two days of hearings on detainee policy. The first day was on the treatment of detainees at Guantanamo, and specifically on the Army's investigation of complaints in FBI e-mails of prisoner abuse and torture. There were three points demonstrated at the first day of the hearings:

1. The Army's investigation of the FBI complaints was a whitewash. Key witnesses from the FBI were not interviewed. Army investigators seem to have started from the assumption that, because of the clashes between FBI and military personnel, the FBI reports were unreliable, and required a high stan-

dard of proof to be upheld.

2. As long as coercive and abusive methods of interrogation had been approved by higher authorities, particularly Defense Secretary Donald Rumsfeld, such techniques were automatically deemed legal and proper. In other words, no one is to be held accountable. Even though Army investigators had recommended that the Commanding General at Guantanamo, Maj. Gen. Geoffrey Miller, be reprimanded, their recommendation was overruled by the Commander of the Southern Command, Gen. Bantz Craddock.

Senators Jack Reed (D-R.I.) and McCain were both highly critical of General Craddock for overriding the investigator's recommendation. Reed called it "ludicrous" that Miller was being exonerated, while a junior officer is being recommended for punishment, and he said he agreed with McCain "that we're in this hole because no one has taken responsibility at a senior level."

3. Abuses of prisoners at Abu Ghraib in Iraq, for which only low-level reservist soldiers were punished, had all been carried out first at Guantanamo. Sexual and religious abuse, physical coercion amounting to torture, threatening prisoners with dogs, and even dragging a prisoner around on a dog leash, had all been done first at Guantanamo, under Miller's direction and supervision.

Miller was then deployed by top Pentagon civilians to Iraq in August-September of 2003, where he embarked on a course of action to "Gitmo-ize" Abu Ghraib, with the result that the most serious abuses at Abu Ghraib took place within weeks of Miller's visit there.

## The Judge Advocates General Object

At the July 14 hearing, Senator Graham stated that Guantanamo is "a legal mess" because of confusion over the status of "enemy combatants" and legal disputes over the use of military tribunals. "Congress has been AWOL here," Graham declared: "We've criticized and we've applauded, but we've been absent when it comes to designing policies dealing with the capture of people on land and sea involved in a war. That is a Constitutional duty of the Congress."

Present as witnesses were the top legal officers of the uniformed services—the Judge Advocates General (JAGs) of the Army, Navy, and Air Force—and also the top legal officer of the U.S. Marines. Elicited in questioning, was that the JAGs had sharply objected to the interrogation policies

put forward by the Justice Department and the Department of Defense civilians in the Spring of 2003, and that they had been overridden by DOD General Counsel William Haynes.

That the JAGs had objected to the DOJ “torture” memos and their incorporation in DOD policy has been known for over a year, but this is the first time that the JAGs have been able to discuss their disagreements publicly. In the hearing, Sen. Ted Kennedy (D-Mass.) attempted to elicit testimony from the JAGs—who were understandably reluctant to openly air their disagreements with the civilian leadership. Senator Graham then insisted that they do so. Graham cited the fact that the DOJ’s position as to what would constitute torture, and what would be a violation of international or domestic law regarding interrogation techniques, had “alarmed” the JAGs who reviewed it. “Is that true or not?” Graham asked. “Speak up.”

At that point, the JAGs answered: “Yes, sir, that is true.”

A number of Senators, both Republican and Democrat, vowed to pursue their quest to obtain the memos that the JAGs wrote at the time. The Army JAG, Gen. Thomas Romig, pointed out that they had written memos, which have not been declassified, “laying out in very strong terms our opinion on some of these things.”