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PRESIDENT
GEORGE W. BUSH

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Press Briefing with National Security Advisor Stephen Hadley on the McCain Amendment

The Roosevelt Room

3:30 P.M. EST

MR. HADLEY: You heard the statement by the President and Senator McCain. I wanted to just give you a little background. This is on the record. Both the President and Senator McCain, in this discussion, sort of started out with the same framework. That is to say, the shared values that this is a country that stands by its principles, respects its laws, and stands for the rule of law.

Secondly, they also shared an objective that we need to be aggressive in defending the country against the terrorists and protecting the men and women of this country from attack, and finally, that we needed to keep faith with our men and women in uniform and civilians who are on the front lines of the war on terror in so many places. And the discussions, which have been long, deliberate, careful, thorough, intensive, all those words, have been to try and strike the right balance between those three things.

Interestingly, the discussion has been less of the text of the McCain amendment as it was originally submitted, and more discussion about the protections for the men and women, both in uniform and civilians, who are engaged in activities involving detainees and interrogations. That's really where most of the discussion has been, because as you remember, the original McCain amendment didn't address any of that. And that was a piece that the President felt was essential. We needed to do all three things: reaffirm our values and principles, aggressively pursue the war on terror and protecting the country, and protecting, through legal protections, our men and women engaged in that fight. And that's really what the discussion has been about.

I'd like to try and summarize a little bit the key features of what we've agreed upon, and then I'd be glad to take your questions. As you know, our policy has been not to use cruel, inhuman or degrading treatment at home or abroad. That has been our policy. The legislative agreement that we've worked out with Senator McCain now makes that a matter of law, not just policy. And it makes it a matter of law that applies worldwide, at home and abroad.

The McCain legislation does not create any new criminal liabilities; it does not create a private rite of action so that the terrorists can sue our men and women who are on the front lines in the war on terror. But it is a very important statement of policy and it makes that policy binding globally.

The legislation -- the legislative agreement that we have reached includes reasonable protections for these men and women who are doing very difficult work in the interests of the country; it provides that those who are involved in detaining and interrogating terrorists and whose activities have been authorized and determined to be lawful will not be held civilly or criminally liable unless they somehow knew or reasonably should be known -- should have known that their activities were unlawful.

This is a protection that has been available to our men and women in uniform as part of the Uniform Code of Military Justice. This legislation now makes it available as a defense to civilians who are working in government agencies who are involved in detaining an interrogation -- interrogating terrorists. So it offers a legal protection, a legal defense to those people.

The legislation also provides that good-faith reliance on the advice of counsel will be an important factor in considering whether the standard I described has been met. It also provides that all existing legal defense and protections for our men and women are preserved.

And finally, in terms of the protections, which is -- I dwell on that, because the other provisions of McCain are very well known to all of you -- it also provides that the amendment makes provision for providing legal counsel to and compensating our service members and government employees, again, engaged in activities that I described for any legal expenses in the event that a terrorist attempts to sue them for the activities these folks have taken on behalf of their country.

So that's what -- what all the negotiations has been about. It has been a active, intensive, and in the end of the day, a successful negotiation. We believe that we have struck the right balance between the three objectives and principles and protections -- those three categories that I talked about. And we believe that our men and women in uniform and others in civilian employ will be able to conduct effective intelligence operations that will protect the country, and that at the same time will be conducted consistent with our law and principles. It's what we've tried to achieve, and that's what we think we've achieved today.

Any -- my colleagues want to add anything to that? Okay.

Q Sir, will this likely to be included in the UCMJ?

MR. HADLEY: The standard is the UCMJ standard.

Q I understand what the standard is. Will it actually be embodied in the Uniform Code of Military Justice?

MR. HADLEY: It already is.

Q It already is.

MR. HADLEY: Yes, sir.

Q What about war crimes? How are they -- do they come to play in this? Are these same shields available to someone who is accused of a war crime?

MR. HADLEY: Well, the statute does not, by its terms -- McCain, by its terms addresses sort of a narrow piece, which is this issue about cruel, inhuman and degrading treatment. And it addresses that because there was a question. As you know, when the United States acceded to the Convention against Torture, we did with a series of understandings that are embodied in the McCain amendment, that it's interpreted by standards of the 5th, 8th, and 14th Amendment.

And in light of that, because of that, those standards, as a technical, legal matter, did not apply abroad. And that's what Senator McCain, in the second section of his legislation, wanted to address -- wanted to make clear that those would apply abroad. We applied them abroad as a matter of policy; he wanted to make sure they applied as a matter of law. And when this legislation is adopted, it will.

So that's what this was really addressing. It was that narrow point.

Q Steve, what do you know about changes to the Army Field Manual that we heard about earlier this week?

MR. HADLEY: I can tell you what I know. They are in the process of doing that. That is an ongoing process we've been aware of. It's one of the things that many people have called for. The Defense Department, as you know, has had really a two-track approach to deal with issues that have raised about detainees and conduct with respect to detainees: One, investigate them, make assessments, and where appropriate, prosecute and hold accountable people who have violated policy, violated law. And then, secondly, to review procedures and revise them. And revisions of the Field Manual are part of that process. It is ongoing. My understanding is that they've not been finalized. This is a long process and it's still ongoing.

Q Do you know if they're expanding the scope of what an interrogator can do? Are they narrowing it?

MR. HADLEY: I think a lot of it is clarifying it, giving people clearer guidance. But again, I've not seen it. It's something being done over at the Department of Defense, and that's really where the questions ought to go.

Q So -- guidance on what cruel and inhuman treatment is? What's the guidance exactly, and why do you need --

MR. HADLEY: On the whole -- you'll have to talk to them. I don't -- the Field Manual is a DOD document, and it deals fairly comprehensively with this whole issue of detainees, interrogations. You're going to have to ask that question to them.

Q Steve, it seems as if a lot of what you ended up with, almost all of what you ended up with is essentially what Senator McCain was telling us several weeks ago he was offering you. And he seemed to confirm that out on the driveway.

MR. HADLEY: No, he didn't. He didn't. Actually, that's just not the case. What was there when we started this process was the McCain amendment, which does not address any of the protections.

Q No, what -- he came back and said, how about providing the same legal defense that somebody would get under Uniform Code -- that's what he said a few weeks ago.

MR. HADLEY: That is a position that he -- he took a position on that issue about having a -- using the UCMJ standard. That was a suggestion that he made. It is one of a whole family of protections. And we had a -- that has been in the mix. But there's been a lot of things in the mix, things he wanted we couldn't do, things we wanted he couldn't do. It's been a long back-and-forth.

We -- something that we both felt very strongly that was embodied in a single sentence was probably something that we negotiated more on than anything else, and we only reached agreement on that sentence yesterday at about 3:30 p.m. in the afternoon.

Q Which sentence was that?

MR. HADLEY: Next question.

Q Oh, okay. If I can just follow up on the collection of things that you wanted that he couldn't do. When the Vice President first went up there in the summer, he wanted immunity. Later on, you folks wanted indemnification. Can you tell us why both of those were impossible?

MR. HADLEY: The indemnification is there. That's what the right to counsel is all about -- both providing counsel by the government and indemnifying, if you will, or paying for the legal fees and associated costs. So that is one of the things that is in there.

There was a discussion in the process about a sort of wholesale exemption, and what we've done is come up with a framework that will apply, I think it's fair to say, equally to men and women in uniform, and for civilians who are involved in dealing with detainees and interrogations.

Q Do you have newer language of this agreement that we could take a look at?

MR. HADLEY: I don't. I have it, but we've not made public -- and I'll tell you why. The language is agreed. The vehicle by which it is going to get enacted by the Congress is still being worked. There are issues, whether it's authorization bills, appropriation bills -- I think Senator Warner was asked about that. They are going to work that issue now. It is going to be a piece, in any case, of a larger package that has been worked. There is the McCain piece, as you know; there's been discussions in the press about some language from -- Senator Graham has been working. This is part of -- and those, in turn, are part of a broader bill -- the Defense Authorization bill, Defense Appropriation bill.

So there is a modalities of enactment that is still being worked. And that, obviously, is going to affect how this --

Q We can't see what you --

MR. HADLEY: I'm trying, in what I said, to tell you what is in it. And I think if you heard what I said, you have a pretty good idea of what's in -- what has been agreed.

Q As I understand it, in a layman's way, what you -- what the Vice President was originally talking about was that civilian intelligence officers, CIA officers, should be able to interrogate detainees, essentially outside U.S.-stated policy, or outside the law. That's why you wanted immunity. Now, you've taken great pains to get whatever you can get, which is some level of protection, legal protection that is a little bit vague because -- well, lawyers do that. They --

MR. HADLEY: It's pretty precise. When you see it, it's pretty precise language.

Q Okay, well then maybe you can help us understand -- does this protect the ability of intelligence officers to essentially use rougher tactics with detainees than members of the armed forces, which is essentially what you wanted in the first place, is that right? Is that a fair layman's way to describe it?

MR. HADLEY: What the President said is what I said at the beginning. The goal of this was to -- from the President's standpoint and early on in my conversations with Senator McCain, it was established that he had the same objectives. We had three things we were going to do: make clear that we shared principles. And one of those important principles was rule of law, and complying with law; secondly, being able to aggressively defend the country; and third, protect those men and women who are doing that. And so the goal of this was --

Q I understand that. But can't we cut right to the chase, which is, why did you want immunity? So that they could use -- civilians could use rougher tactics than the policy allowed for? Wasn't that why you wanted the CIA to be beyond the reach of this law?

MR. HADLEY: The President has made clear from the very beginning that the CIA -- that anyone in this government is going to comply with law. That's what the President said from the very beginning: We do not torture.

Q Why do you need immunity?

MR. HADLEY: We do -- we comply with the law --

Q But why do you need immunity?

MR. HADLEY: There was a discussion of immunity. There are many times in law when the U.S. government gives immunity to people who are engaged in difficult, challenging positions. I'll give you an example -- as you know, there is a program in Latin America where we assist countries to interdict those people who are flying drugs out of their country. They're the country's program, but we assist it with government employees. There's an immunity that was given by the Congress to people involved in that program to ensure that they do not need to worry about lawsuits and harassing lawsuits in a

program where they're taking risks at the request of their government to pursue national objectives. This is something that the government does many times, offers immunity from civil and criminal prosecution. It was a legitimate thing to consider in this context.

In the end of the day, we all agreed that in order to achieve all three of our objectives to comply with the law, as the President said everybody in this administration was going to do, and reaffirm our commitment to the rule of law, still be aggressive on the war on terror to be able to defend the country, and to protect -- to give an adequate measure of protection to people, this was the better balance. And that's what the President decided.

Q Can't you just say, yes, or, no, whether this is about providing these civilian officers greater latitude tactically when it comes to the interrogation of detainees than others, particularly in the armed services would have?

MR. HADLEY: The standard now applies, as I said earlier, both to the armed forces and to the civilians, a common standard applying to anyone who is engaged in this activity. That's where we are.

Q Did the House vote --

MR. HADLEY: Peter?

Q The veto threat that was issued -- do you think now, in hindsight, that was a smart idea? Was that a good tactic, or did that put you on the side of an issue you didn't really want to be on?

MR. HADLEY: I think that you judge the tactics by the outcome. And we've got a good outcome, and that's what the President wanted to achieve, and that's what we've achieved.

Anything else?

Q Do you think the outcome was closer to what McCain wanted, though, than what you originally wanted?

MR. HADLEY: Well, McCain came in with a two-part statute that dealt with the issue of the standard. And again, as I said, three objectives: reaffirm a nation of laws, aggressively fight the war on terror, protect our people. Protect our people didn't show, and that's why we needed to -- that's what the discussion has been about, because it was a third objective. And early on in my conversations with Senator McCain, he was clear that it needed to be addressed, as well. And that's what we've been focusing on.

Q Sir, did the House vote yesterday put extra pressure on you guys to get this thing done?

MR. HADLEY: I don't know when I learned about the House vote, but, you know, you get -- in these negotiations, you kind of get in a tube where they begin to come together. We were in the tube by the time of the House vote.

Q Stephen, if the objectives between the White House and McCain were pretty much shared, and this would seem to be a fairly simple piece of language that you've come up with, why did it take so long?

MR. HADLEY: I think it's evidence that it's not that simple, because there are tensions between these three things. And the question is, how do you get the right balance? And that's what we were talking about. Do you do it by immunity? Do you do it by a legal standard that is a defense? Is that defense the same for military, the same for civilians? Do you tailor that defense to reflect the peculiarities of folks who are dealing with detainees and interrogations? What is the extent of the protections of the indemnification? How is it supposed to work?

These are -- three weeks is not bad, given the complexity and the difficulty of these issues, that's what I'd say.

Q Steve.

MR. HADLEY: Yes, ma'am.

Q Within those three weeks, there have been a lot of critics worldwide who have said this has really tainted the image of the United States. I mean, how politically damaging do you think it was to engage in this debate in the first place with McCain, and do you feel like it was worth it?

MR. HADLEY: Oh, yes. I think one of the reasons that the Senator and the President found common ground was the need to reaffirm to the world just what I said, that you can comply with your laws, you can be aggressive in the war on terror, and you can protect your people. And that, I think, is an important message.

So I think both of them felt that it was very important for the country and for the message we send to the world to come to an agreement, and that's what we've done.

Thanks a lot. Nice to see you.

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