



## Issuing Restraint

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How close to performing torture can U.S. soldiers come before they are in violation of the law? What, if any, are the official limitations that the United States government places upon the treatment of enemy combatants? Are these enemy combatants protected under the Geneva Conventions?

More than a year ago, Capt. Ian Fishback, found himself asking those exact questions. Spurred by a remark from Secretary of Defense Donald Rumsfeld that implied that the events of the Iraq War were subject to the “spirit” of the Geneva Conventions, Fishback began an independent inquiry.

While on duty in Iraq, Fishback had personally witnessed a wide range of what he considered to be clear abuses of military power—events ranging from death threats against captured combatants to the breaking of bones and regular beatings of detainees.

A graduate of West Point, Fishback naturally sought clarification on the military’s policies regarding the internment of captured combatants. What he discovered was, in his own words, “deeply troubling.” 17 months after Fishback began his attempt to clarify these specific standards, he found himself no closer to an answer on the issue.

That Fishback, an officer of the United States military, would be unable to uncover these standards after 17 months of investigation is, indeed, troubling; that he would also be met with the friction that attended his investigation is doubly so. (Fishback was allegedly told to think about his career before continuing his inquiry.)

After he concluded his investigation without success, Fishback decided to contact members of Congress and urge them to impose more specific guidelines for prisoner interrogations. After being met with silence from many senators, including Senate Majority Leader Bill Frist, Fishback finally found an audience in Republican Senator from Arizona John McCain.

With bipartisan support, McCain drafted an amendment to the annual Department of Defense appropriations bill. The amendment establishes uniform standards for prisoner treatment and interrogation according to the United States Army Field Manual on Intelligence Interrogation. It also explicitly prohibits "cruel, inhuman, and degrading treatment or punishment" of detainees, regardless of geographical location or the affiliation of the combatants, national or otherwise.

Whereas members of the United States military were previously held to very general military law regarding the treatment of detainees, the McCain amendment would make the codes of military conduct more specific.

The bill passed 90-9 in the Senate, with senators on both sides of the aisle showing overwhelming support for McCain's amendment. The amendment is also supported by a broad group of human rights organizations and former military officers, including former Secretary of State Colin Powell. In a letter to McCain, Powell wrote, "I...believe the world will note that America is making a clear statement with respect to the expected future behavior of our soldiers."

But just how will the amendment change the behavior of soldiers? The Army Field Manual, for example, already prohibits many of the abuses committed at Abu Ghraib and other US prisons in Iraq.

In addition, although the passage of the DOD Appropriations bill with the inclusion of Amendment #1977 is clearly indicative of its support within Senate, the rejection of the amendment is still possible once it reaches President Bush or the opposing majority within the House of Representatives.

With its future undecided, conclusions can be made as to the effect of McCain's proposal regardless of whether it is accepted, refused, diluted, or enforced only sporadically. Awareness of detainee treatment is on the rise and our nation's rapport with the international community is under review. With this, much-needed attention will be given to international law and the protection of basic human rights and dignity. Our nation's leadership, as well as successful global interdependence relies partly on the ability of our government to reemphasize our military's standards of conduct to both its soldiers and the world.

On October 5, 2005, McCain, who was a prisoner of war in Vietnam, stated, "war does not occur in theory, and our troops are not served by ambiguity. [Our soldiers] are crying out for clarity." The recent case featuring Lynndie England underscores an

important point: confusion on policy with regard to detainees increases the risk of abuse.

The U.S. military's current operational ambiguity detracts from its capability to extract reliable intelligence information, which in turn impedes the strategic appropriation of government resources. Furthermore, soldiers like Fishback, who publicly support Amendment #1977, are increasingly placed in a needless ethical bind because of such uncertainty.

Clarity and efficacy within the U.S. military are valued across party lines, making it clear that an articulation of appropriate conduct is essential. While future criticism of the military may face political resistance, it is vital that McCain's amendment be only the beginning of continued discourse, not the final word on treatment of foreign detainees.

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