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*CBS News*

# ***FACE THE NATION***

*Sunday, September 17, 2006*

**GUESTS: Senator LINDSEY GRAHAM (R-SC)  
Member, Armed Services Committee**

**Senator ARLEN SPECTER (R-PA)  
Chairman, Judiciary Committee**

**Senator CARL LEVIN (D-MI)  
Ranking Member, Armed Services  
Committee**

**STEPHEN HADLEY  
White House National Security  
Advisor**

**MODERATOR: BOB SCHIEFFER - CBS News**

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***FACE THE NATION - CBS NEWS  
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BOB SCHIEFFER, host:

Today on FACE THE NATION, the Republican rebellion on Capitol Hill. It was supposed to be the week when Republicans came together behind the president to convince Americans they could better protect the country against terrorists than the Democrats. Instead, a nasty brawl broke out among Republicans over the president's plans and whether they were putting American soldiers in danger. We'll hear from all sides this morning, South Carolina's Senator Lindsey Graham, one of the leaders of the rebellion; Democratic Senator Carl Levin; Republican Senate Judiciary Committee chairman Arlen Specter; and the president's national security adviser, Stephen Hadley. I'll follow the discussion with a final thought on all of this. But first, the Republican rebellion on FACE THE NATION.

Announcer: FACE THE NATION with CBS News chief Washington correspondent Bob Schieffer. And now, from CBS News in Washington, Bob Schieffer.

SCHIEFFER: And we start this morning with Senator Graham, who's in the studio with us here in Washington.

Senator LINDSEY GRAHAM (Republican, South Carolina; Member, Armed Services Committee): Good morning.

SCHIEFFER: In Philadelphia, the Senate Judiciary Committee chairman Arlen Specter. With us from Detroit, Senator Carl Levin, who of course is the ranking Democrat on the Armed Services Committee.

Senator Graham, I want to talk to you first for a little bit. The president said last week that if the Congress does not write some sort of authority defining basically what the CIA can do in its interrogation, that the CIA will simply have to stop interrogating people. Number one, do you believe that's going to happen? And number two, could you live with that if that's what it came to?

Sen. GRAHAM: Well, the problem we're facing as a nation is sort of like seeing sausage being made, that there are three branches of government. The president assumed the Geneva Convention did not apply to the war on terror, humane treatment did. I agreed with that. The Supreme Court says the Geneva Convention applies. So what I would like to do is give our president the tools that we need to defend ourselves, an effective CIA program where our agents can't be prosecuted for war crimes ill-defined. They can't be sued and lose their houses because they're doing their job. They can defend themselves in court if they're ever accused of doing something by saying, 'I was following orders.' The way we do that is very important. The tools that we give them could become clubs to be used against us if we don't watch it.

SCHIEFFER: Well, we'll talk about that. What is wrong, in your view, with what the president wants to do?

Sen. GRAHAM: Well, there's two things after Hamdan decision. The first thing...

SCHIEFFER: What's Hamdan decision?

Sen. GRAHAM: That was the Supreme Court decision that struck down the military trials of enemy terrorists.

SCHIEFFER: All right.

Sen. GRAHAM: We got to deal with getting the trials back on track, and how can we interrogate people within the Geneva Convention. If it's seen that our country is trying to redefine the Geneva Convention to meet the needs of the CIA, why can't every other country redefine the Geneva Convention to meet the needs of their secret police? It would be disaster. We can protect the program, the program is people, but we need not, in my opinion, go down the road of being seen as redefining treaty obligations that have been long-standing.

The Geneva Convention, Bob, is just not some concept; it has saved lives. We adhere to it, and we expect others to do it. I know al-Qaeda and Taliban will butcher our people, but this is not the only war we're going to be in, and I can give you plenty of examples of--for downed pilots, people caught in foreign countries, who were saved from torture and death because we insisted the Geneva Convention be applied. So that's my concern. I want to create a CIA program that fits within our domestic laws, where people won't be charged with ill-defined crimes, they won't be frivolously sued, but we cannot and must not and need not change the Geneva Convention in a way that would be perceived as backing out of it. There's a way to get there from here.

SCHIEFFER: Well, explain to me what you mean when you say if an American is captured...

Sen. GRAHAM: Let me give you a good example.

SCHIEFFER: Well, let's say in Iran. What would...

Sen. GRAHAM: Well, this war can take on many different dimensions. Nation-states could become involved, not just rogue people like al-Qaeda and Taliban. There are CIA agents all over the world trying to protect us. What would happen if a CIA agent were captured in Iran trying to suppress their nuclear program, and the Iranian government put this person on trial as a war criminal, and the Iranian prosecutor had a file marked "secret," gave it to their judge and their jury, and said, 'Convict this man,' and they never shared the evidence with the American agent? We would go nuts. We would say that secret trial violates the Geneva Convention standards for trying people. What if the Iranians gave him a lawyer, and allowed the lawyer to look at the evidence the jury had, but would not allow the lawyer to talk to the agent about the case against him? What would we do if the Iranians sentenced an American to death based on evidence the American never saw? We would go crazy.

Unfortunately, there's 90 percent agreement on how to do these trials after

the Supreme Court ruling, but there's a provision in the military commission model of the president's proposal that would allow the jury to get evidence not seen by the accused, call it classified, and the person go to jail never knowing what the jury convicted him of. I'm all for protecting classified information from being unfairly disclosed, but you cannot have a trial and call it an American trial, have a Geneva Convention trial where the person goes to jail and never saw what the jury saw.

What does confrontation rights mean? It means you can tell your side of the story. Pedophiles and terrorists, everybody we try, deserves to know what they're accused of so they can defend themselves. And if we do it differently now, different than we done in 200 years, it will come back to haunt us, because other people will start doing this. And imagine an American in a foreign land going to the death chamber never seeing the evidence against them. It would be an outrage against our people, and we can't legitimize that.

SCHIEFFER: Senator, what, in your view, from your point of view, is worse, the impression that you think it would send to other countries and other people around the world or the tactical restraints that it would put on our interrogators?

Sen. GRAHAM: Well, I think that it would be a substantive difference. If you do a trial in America where we legitimize the jury seeing something the accused can't defend himself against, it's going to come back to haunt us. The Iranian situation could be very real in the coming future.

The worst thing we could do, in my opinion, is to create tools that are seen as legal shortcuts that erode our standing in the world. We need to change our laws to make them more clear. They are confusing. The president does need a program. The CIA does need a program to get good information. We can do that together.

My goal is simple: I want to give the tools to the president to defend us that the Congress can feel good about, that the courts will accept as legal. We need all three branches of government onboard.

SCHIEFFER: Let me ask you. I'll just ask you, and I'll bring in the other senators in a minute. This would seem to me to be a huge political risk for you. You come from a very conservative state, a state that is probably one of the strongest states for President Bush.

Sen. GRAHAM: Right. Right.

SCHIEFFER: You're taking on the president on this. I'll bet you that you get a primary opponent as a result of this.

Sen. GRAHAM: Well, I'm getting pounded at home by some people, 'Why can't you work with the president? The president wants to defend us. He needs--the CIA needs to get good information. These guys are barbarians. Why're you standing in the way?' I'm not standing in the way. I share the same goals.

But I'm a military lawyer, 22 years as a member of the Air Force JAG Corps. When I put that uniform on, I took an obligation as a military officer. Now I have an obligation as a senator. I admire the president and I want to help him, but the biggest risk in the world is not Lindsey Graham loses an election. We can have a good country without Lindsey Graham being in the Senate. We cannot have a great nation when we start redefining who we are under the guise of redefining our law.

My biggest fear is that, as we try to solve these complicated legal procedures and problems, that we're seen as taking shortcuts, and we don't redefine the law, we redefine America in a way so we can't win this war. That's what Colin Powell's saying; that's what General Batiste's saying. It's not about my political career. America can do well without me, but we cannot do well if we're seen to abandon our principals and the rule of law.

SCHIEFFER: All right. Well, let's bring in the other senators.

Senator Specter, you are, of course, the chairman of the Judiciary Committee. I'm not clear on where you stand on all of this. Are you with Lindsey Graham on this or are you with the president?

Senator ARLEN SPECTER (Republican, Pennsylvania; Chairman, Judiciary Committee): Bob, I agree with Senator Graham, Warner, and McCain, that you cannot have classified information which is not shown to the defendant. I agree with them that you cannot use coerced confessions because they're unfair and unreliable. I disagree with Senator McCain, Graham and Warner and the president, trying to eliminate habeas corpus--that is, judicial review, because we have so many complicated matters. When you come to the Geneva Convention, we have to follow the Geneva Convention.

But what I'm looking for is a way to accommodate both interests, and I think that is--that is possible. We did some additional research yesterday, and find that in the Geneva Convention of 1990 on torture, they incorporated our constitutional standards on due process and coerced confession and cruel and unusual punishment. My people are meeting with Senator McCain's people this afternoon, tomorrow morning with Lindsey Graham's people and John Warner's people and John McCain's people.

I think we have to have the definition so we know where they stand, both for the interrogators--who ought not to be sued, they ought to have the clear standards--and also for the people who are being questioned. And I think we can comply with the Geneva Convention and satisfy the needs to question people to protect America from terrorists.

SCHIEFFER: All right. So you see a way possibly out of this. Well, let's go to Senator Levin, who, of course, is the ranking Democrat on the Armed Services Committee.

Where are you on all this, and especially after hearing Senator Graham this morning, Senator Levin?

Senator CARL LEVIN (Democrat, Michigan; Ranking Member, Armed Services Committee): Well, I was with Senator Graham, Senator McCain, Senator Warner, of course, on Thursday when the Armed Services Committee rejected the administration's approach. We adopted one which is something which not only upholds our values but protects our troops from the kind of action which will be taken against us if we don't live up to Geneva.

We cannot claim that we are abiding by international treaties such as the protections in Geneva that protect our troops if we decide unilaterally that we're going to modify Geneva. And the problem with this administration is that it's had this unilateral approach to law and to many other things in this world and it's coming back to haunt us. And if we modi--(clears throat)--excuse me, and if we modify Geneva unilaterally, it's going to come back to haunt us, because other countries are going to say, 'You people don't live up to obligations. What we saw at Abu Ghraib is what the CIA is all about, and don't complain when we treat your people the way you treat detainees.'

And so, that's what the stakes are here. All the 11 Democrats on the Armed Services Committee, everyone of us were in agreement with Senator Warner, Senator McCain, Senator Graham. And by the way, if anybody knows about Geneva, up close and personal, it's Senator McCain. He's had to live in conditions when he was treated--when he was tortured, which violated Geneva. He understands the importance of complying with Geneva both in terms of protecting our troops, but also in terms of winning a war on terrorism and not handing, as Senator Graham said, our opponents a club that we're a bunch of hypocrites and we violated international law.

SCHIEFFER: Senator, from a practical standpoint, do you think that Democrats and these dissident Republicans, as it were right now, can find a way to resolve this before the Congress adjourns?

Sen. LEVIN: Well, I don't see a way unless the president gives up on his idea that we're going to unilaterally modify Geneva.

I don't know if the Republicans you describe are dissident Republicans. There may be many, many more Republicans who will stand with Senators McCain and Graham and Warner.

But I do believe that we've got to stay with the position that protects American troops, that protects American values, and avoids handing our enemy, the terrorists, the weapon which they want more than anything else, probably, which is that America are hypocrites, that America mistreats prisoners. That plays into their hands. That's the propaganda tool that they want, and we should not hand it to them. And I hope the Senate will stand with the Armed Services Committee and not with the unilateralist administration which we now have.

SCHIEFFER: Senator Graham, the president really drew the line this--last week. There's no question about that. Do you think your side has picked up any support since the president? Or do you think the president brought some

people over to his side?

Sen. GRAHAM: Well, this is like watching sausage being made, the old joke is true. These are complicated issues. The president is standing on principle. I share his goals. I want a CIA program that's classified, that has aggressive techniques that will allow us to be safe. I want to make sure that our agents can't be prosecuted for ill-defined crimes, and we need to change Title 18. Senator Specter's done a pretty good job of doing that. We need to make sure they're not sued.

I guess the big difference here is that when you try to redefine the treaty obligations--not the criminal statutes protecting people, but treaty obligations of the nation--you walk down the road that Senator Levin is talking about. I think we can get there from here. I'm willing to compromise. I hope common sense will prevail and we'll get it right. This won't be the last war we're in. And you've got to not just talk the talk, you've got to walk the walk.

SCHIEFFER: One final question to Senator Specter. Senator Specter, do you see a way out here?

Sen. SPECTER: I definitely do. It is our job in the Congress, in the Senate, to solve these problems. And if we sit down and work on it, the research we found yesterday, which hadn't been discussed before, where you have the Geneva Convention of 1990 on torture incorporating just the provisions that Senator McCain is concerned about. And when you have the judge advocate generals in this, I think we, perhaps, ought to have another hearing. We had a letter which was constructed with the Department of Defense last week which has been subject to challenge as to whether the JAG officers were pressured. The Judiciary Committee has the primary responsibility on war crimes and on the Geneva Convention. And I think that we can really find out where those JAG officers stand if we have a question-and-answer session, so that our people are going to be at work this afternoon with Senator McCain's staff and tomorrow morning with Senator Warner and Senator Graham's staff. And our job is to find an answer, and I think we can give the CIA the tools it needs to protect Americans and to question terrorists and to comply with the Geneva Convention. That's our job and we can do it.

SCHIEFFER: All right. Well, gentlemen, I want to thank all of you. We could continue this on for most of the morning, but we want to give the White House a chance to give us their side of all this, and we'll be back in a minute with that.

(Announcements)

SCHIEFFER: And joining us now, the White House national security adviser, Stephen Hadley.

Mr. Hadley, you heard what the senators said, and I would point out that everybody seems to think there's a way to compromise here. But Senator Levin, the Democrat, said not if the president insists on modifying the Geneva

Convention. Now what would your--and I know you're going to say he's doesn't want to modify it--but what would be your reaction to that?

Mr. STEPHEN HADLEY (White House National Security Advisor): The most important thing here and the question before the Congress and the American people is, `Do we want a program run by the Central Intelligence Agency that questions these al-Qaeda terrorists like Khalid Shaikh Mohammed and Hamzi Rabita? If you do--and we think this is an important program, the information from it has disrupted plots and saved lives, we think it's critical to have this program going forward--if we do, then there's some things we need to do.

We need to have clear legal guidance for the men and women who carry out this program. We have to make clear that it has congressional support. That's the real issue. Do you want the program? If so, we need to give clear guidance to the men and women who front it. And if you don't want the program, then you explain why you're willing to give up a tool which really has gotten more information about al-Qaeda and made more of a contribution in preventing attacks on this country and our troops abroad than almost any other country. That's the--any other program--that's the issue.

SCHIEFFER: Mr. Hadley, let me just ask you this. As I listen to this discussion, this thought occurred to me: Why couldn't you just say `Use the rules that the FBI uses'? We've been getting along fine for a long, long time and they certainly have rules that they follow. Why couldn't you just do that?

Mr. HADLEY: Well, there are rules, of course, that the Department of Defense uses when they question people picked up on the battlefield. But the truth is, they're not trained for the kind of program we're talking about now. The question is, `How do you deal with the most dangerous terrorists most likely to have information that we need to protect the country?' And our experience has been that the military rules don't work. Why? Because they're public, they're printed in an Army field manual, that allows the terrorists to train against them. These folks are very well-trained. And what the experience has been, and the president set this out...

SCHIEFFER: Well, wait, let me just interrupt you here.

Mr. HADLEY: Yes, sir.

SCHIEFFER: Then why is it you want to codify what it is that the CIA can do and can't do?

Mr. HADLEY: We don't want to codify what they do and they can't do. We want to know clearly what the legal standard is. And the problem here, of course, is because of the decision by the Supreme Court that said for the first time in 40 years that what's called Common Article 3 applies to the conflict with al-Qaeda. It imports some new standards that have very ambiguous language in them: outrages against personal dignity, humiliating treatment. Nobody knows what those mean. And the men and women of the intelligence community are saying...

SCHIEFFER: So you're going to publish what that means? Is that what you want to do?

Mr. HADLEY: You're simply going to--we want to do what the Congress did in December of last year and say that means the McCain Amendment, the Detainee Treatment Act, which procluded cruel, inhuman and degrading treatment and defined what those terms meant by reference US law.

SCHIEFFER: But...

Mr. HADLEY: This is about--it's very simple, Bob--a clear standard recognized under US law that the Congress of the United States adopted in December to great applause, sponsored by Senator McCain, adopting that as our standard so that the men and the women in the Central Intelligence Agency can run a program, which is probably the most important tool we have in the war on terror. That's what this is about.

SCHIEFFER: Well, what about the--leaving the impression that what you're saying is--I'm not saying this is what you're going to do, but I'm saying you're--aren't you leaving the impression that these are such mean people we will have to torture them...

Mr. HADLEY: No.

SCHIEFFER: ...to find out what they--what it is that they're about.

Mr. HADLEY: President said very clear this is not about torture. This is about a program that is going to be professionally run by people who have been highly trained. But the president made very clear in his speech a week ago Wednesday, and gave some examples where people like Khalid Shaikh Mohammed, using traditional questioning rules gave us nothing. And only when he was put into the CIA program did he give us information that allowed us to disrupt plots and save lives. This is not about torture, it's about a professional program which we need to defend the country, and defend our men and women on the battlefield.

SCHIEFFER: You and Senator Graham, back in the green room before this broadcast, had quite an interesting discussion about all of this. And I'm not going--I understand that that was off the record. Do you think, just as a result of that, or just because it's today and not last Thursday, are you any closer to coming to some agreement with these Republicans who don't agree with you right now, than you were, say, two days ago?

Mr. HADLEY: I was very pleased to hear Senator Graham say very clearly that he believes we need a program of aggressive questioning run by the CIA. That's very important. I think the way ahead here is to all come together behind the proposition that the president has made, that we need this CIA program. That's the first thing. Secondly, we need to give the CIA clear guidance, and third, we need to do it without modifying or amending Common Article 3. I--we need to work towards that outcome.

SCHIEFFER: But do you think you might be able to do that?

Mr. HADLEY: I think people need to sit down and find a way forward with some language that meets those three objectives, yes, sir.

SCHIEFFER: All right. Thank you, Mr. Hadley. Thanks.

We'll be back in a minute.

(Announcements)

SCHIEFFER: Well, you just heard it. For the Bush administration, this was the week that wasn't--the week that just wasn't the way it was supposed to be. In a carefully orchestrated campaign built around the fifth anniversary of 9/11, the president had hoped to convince the nation the war on terror was the most serious issue of our time. I happen to believe he's right about that.

But when he turned his prime-time speech on 9/11 into a defense of his decision to go to war in Iraq, Democrats accused him of playing politics. Worse for the president was the rebellion we just talked about that broke out among his supporters--Republicans all--about whether the president's ideas about handling enemy prisoners might be endangering our own troops. Some of the president's most conservative supporters said yes, those ideas would put our troops in danger.

When you consider these critics' credentials--McCain, once a prisoner of war himself; South Carolina's Senator Graham, a member of the Judge Advocate General's Corps in the Air Force Reserves; John Warner, who is the hawkish chairman of the Senate Armed Services Committee; and then Colin Powell, of all people, once the president's Secretary of State--you have to wonder how this president got himself on this side of this issue in opposition to this group.

Whatever the answer to that, it left Democrats in an unaccustomed position. They no longer had to quote themselves in their opposition to the president's plan. For now, they can just refer all questions to Republicans. That is a place no president or his party wants to be, heading into an election.

That's it for us. We'll see you next week, right here on FACE THE NATION.