Brown, Corrine
Butterfield
Capps
Capuano
Cardin
Cardoza
Carnahan
Carson
Case
Chandler
Clay
Clyburn
Conyers
Cooper
Costa
Costello
Cramer
Crowley
Cuellar
Cummings
Davis (AL)
Davis (CA)
Davis (IL)
Davis (TN)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Doggett
Doyle
Edwards
Emanuel
Engel
Eshoo
Etheridge
Evans
Farr
Filner
Ford
Frank (MA)
Gilchrest
Gonzalez
Gordon
Green, Al
Green, Gene
Grijalva
Gutierrez
Harman
Hastings (FL)
Herseth
Higgins
Hinchey
Hinojosa
Holden
Holt
Honda
Hooley
Hoyer
Inslee
Israel
Jackson (IL)
Jefferson
Johnson, E. B.
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kind
Kucinich
Langevin
Lantos
Larsen (WA)
Larson (CT)
Leach
Lee
Levin
Lipinski
Lofgren, Zoe
Lowey
Lynch
Maloney
Markey
Matheson
Matsui
McCarthy
McCollum (MN)
McDermott
McGovern
McIntyre
McKinney
McNulty
Meek (FL)
Meeks (NY)
Michaud
Miller (NC)
Miller, George
Mollohan
Moore (KS)
Moore (WI)
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Paul
Payne
Pelosi
Peterson (MN)
Pomeroy
Price (NC)
Rahall
Reyes
Ross
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Salazar
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Schakowsky
Schiff
Schwartz (PA)
Scott (GA)
Scott (VA)
Serrano
Sherman
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Spratt
Stark
Stupak
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Tierney
Towns
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOT VOTING—16

Castle
Cleaver
Culberson
Davis (FL)
Fattah
Jackson-Lee (TX)
Johnson (CT)
Lewis (GA)
Marshall
Meehan
Millender-McDonald
Ney
Oxley
Rangel
Strickland
Weldon (PA)

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Members are advised 2 minutes remain in this vote.

□ 1322

So the resolution was agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PRIVILEGED REPORT ON RESOLUTION OF INQUIRY TO SECRETARY OF STATE

Mr. BARRETT of South Carolina, from the Committee on International Relations, submitted a privileged report (Rept. No. 109–689) on the resolution (H. Res. 985) directing the Secretary of State to provide to the House of Representatives certain documents in the possession of the Secretary of State relating to the report submitted to the Committee on International Relations of the House of Representatives on July 28, 2006, pursuant to the Iran and Syria Nonproliferation Act, which was referred to the House Calendar and ordered to be printed.

PERSONAL EXPLANATION

Ms. WOOLSEY. Mr. Speaker, on September 21, I inadvertently voted ''aye'' on rollcall 470, the Appalachian Regional Development Act Amendments of 2006. Please let the RECORD reflect that I enter a ''no'' vote on this rollcall.

MILITARY COMMISSIONS ACT OF 2006

Mr. HUNTER. Mr. Speaker, pursuant to House Resolution 1042, I call up the bill (H.R. 6166) to amend title 10, United States Code, to authorize trial by military commission for violations of the law of war, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to House Resolution 1042, the amendment printed in House Report 109–688 is adopted and the bill, as amended, is considered read.

The text of the bill, as amended, is as follows:

H.R. 6166

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Military Commissions Act of 2006''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

SEC. 2. CONSTRUCTION OF PRESIDENTIAL AUTHORITY TO ESTABLISH MILITARY COMMISSIONS.

The authority to establish military commissions under chapter 47A of title 10, United States Code, as added by section 3(a), may not be construed to alter or limit the authority of the President under the Constitution of the United States and laws of the United States to establish military commissions for areas declared to be under martial law or in occupied territories should circumstances so require.

SEC. 3. MILITARY COMMISSIONS.

(a) MILITARY COMMISSIONS.—

(1) IN GENERAL.—Subtitle A of title 10, United States Code, is amended by inserting after chapter 47 the following new chapter:

''CHAPTER 47A—MILITARY COMMISSIONS

''SUBCHAPTER I—GENERAL PROVISIONS

''§ 948a. Definitions

''In this chapter:

''(1) UNLAWFUL ENEMY COMBATANT.—(A) The term 'unlawful enemy combatant' means—

''(i) a person who has engaged in hostilities or who has purposefully and materially supported hostilities against the United States or its co-belligerents who is not a lawful enemy combatant (including a person who is part of the Taliban, al Qaeda, or associated forces); or

''(ii) a person who, before, on, or after the date of the enactment of the Military Commissions Act of 2006, has been determined to be an unlawful enemy combatant by a Combatant Status Review Tribunal or another competent tribunal established under the authority of the President or the Secretary of Defense.

''(B) CO-BELLIGERENT.—In this paragraph, the term 'co-belligerent', with respect to the United States, means any State or armed force joining and directly engaged with the United States in hostilities or directly supporting hostilities against a common enemy.

''(2) LAWFUL ENEMY COMBATANT.—The term 'lawful enemy combatant' means a person who is—

''(A) a member of the regular forces of a State party engaged in hostilities against the United States;

''(B) a member of a militia, volunteer corps, or organized resistance movement belonging to a State party engaged in such hostilities, which are under responsible command, wear a fixed distinctive sign recognizable at a distance, carry their arms openly, and abide by the law of war; or

''(C) a member of a regular armed force who professes allegiance to a government engaged in such hostilities, but not recognized by the United States.

''(3) ALIEN.—The term 'alien' means a person who is not a citizen of the United States.

''(4) CLASSIFIED INFORMATION.—The term 'classified information' means the following:

''(A) Any information or material that has been determined by the United States Government pursuant to statute, Executive order, or regulation to require protection against unauthorized disclosure for reasons of national security.

''(B) Any restricted data, as that term is defined in section 11 y. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(y)).

''(5) GENEVA CONVENTIONS.—The term 'Geneva Conventions' means the international conventions signed at Geneva on August 12, 1949.

''§ 948b. Military commissions generally

''(a) PURPOSE.—This chapter establishes procedures governing the use of military

commissions to try alien unlawful enemy combatants engaged in hostilities against the United States for violations of the law of war and other offenses triable by military commission.

''(b) AUTHORITY FOR MILITARY COMMISSIONS UNDER THIS CHAPTER.—The President is authorized to establish military commissions under this chapter for offenses triable by military commission as provided in this chapter.

''(c) CONSTRUCTION OF PROVISIONS.—The procedures for military commissions set forth in this chapter are based upon the procedures for trial by general courts-martial under chapter 47 of this title (the Uniform Code of Military Justice). Chapter 47 of this title does not, by its terms, apply to trial by military commission except as specifically provided in this chapter. The judicial construction and application of that chapter are not binding on military commissions established under this chapter.

''(d) INAPPLICABILITY OF CERTAIN PROVISIONS.—(1) The following provisions of this title shall not apply to trial by military commission under this chapter:

''(A) Section 810 (article 10 of the Uniform Code of Military Justice), relating to speedy trial, including any rule of courts-martial relating to speedy trial.

''(B) Sections 831(a), (b), and (d) (articles 31(a), (b), and (d) of the Uniform Code of Military Justice), relating to compulsory self-incrimination.

''(C) Section 832 (article 32 of the Uniform Code of Military Justice), relating to pretrial investigation.

''(2) Other provisions of chapter 47 of this title shall apply to trial by military commission under this chapter only to the extent provided by this chapter.

''(e) TREATMENT OF RULINGS AND PRECEDENTS.—The findings, holdings, interpretations, and other precedents of military commissions under this chapter may not be introduced or considered in any hearing, trial, or other proceeding of a court-martial convened under chapter 47 of this title. The findings, holdings, interpretations, and other precedents of military commissions under this chapter may not form the basis of any holding, decision, or other determination of a court-martial convened under that chapter.

''(f) STATUS OF COMMISSIONS UNDER COMMON ARTICLE 3.—A military commission established under this chapter is a regularly constituted court, affording all the necessary 'judicial guarantees which are recognized as indispensable by civilized peoples' for purposes of common Article 3 of the Geneva Conventions.

''(g) GENEVA CONVENTIONS NOT ESTABLISHING SOURCE OF RIGHTS.—No alien unlawful enemy combatant subject to trial by military commission under this chapter may invoke the Geneva Conventions as a source of rights.

''§ 948c. Persons subject to military commissions

''Any alien unlawful enemy combatant is subject to trial by military commission under this chapter.

''§ 948d. Jurisdiction of military commissions

''(a) JURISDICTION.—A military commission under this chapter shall have jurisdiction to try any offense made punishable by this chapter or the law of war when committed by an alien unlawful enemy combatant before, on, or after September 11, 2001.

''(b) LAWFUL ENEMY COMBATANTS.—Military commissions under this chapter shall not have jurisdiction over lawful enemy combatants. Lawful enemy combatants who violate the law of war are subject to chapter 47 of this title. Courts-martial established under that chapter shall have jurisdiction to try a lawful enemy combatant for any offense made punishable under this chapter.

''(c) DETERMINATION OF UNLAWFUL ENEMY COMBATANT STATUS DISPOSITIVE.—A finding, whether before, on, or after the date of the enactment of the Military Commissions Act of 2006, by a Combatant Status Review Tribunal or another competent tribunal established under the authority of the President or the Secretary of Defense that a person is an unlawful enemy combatant is dispositive for purposes of jurisdiction for trial by military commission under this chapter.

''(d) PUNISHMENTS.—A military commission under this chapter may, under such limitations as the Secretary of Defense may prescribe, adjudge any punishment not forbidden by this chapter, including the penalty of death when authorized under this chapter or the law of war.

''§ 948e. Annual report to congressional committees

''(a) ANNUAL REPORT REQUIRED.—Not later than December 31 each year, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report on any trials conducted by military commissions under this chapter during such year.

''(b) FORM.—Each report under this section shall be submitted in unclassified form, but may include a classified annex.

''SUBCHAPTER II—COMPOSITION OF MILITARY COMMISSIONS

''Sec.

''§ 948h. Who may convene military commissions

''Military commissions under this chapter may be convened by the Secretary of Defense or by any officer or official of the United States designated by the Secretary for that purpose.

''§ 948i. Who may serve on military commissions

''(a) IN GENERAL.—Any commissioned officer of the armed forces on active duty is eligible to serve on a military commission under this chapter.

''(b) DETAIL OF MEMBERS.—When convening a military commission under this chapter, the convening authority shall detail as members of the commission such members of the armed forces eligible under subsection (a), as in the opinion of the convening authority, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member of an armed force is eligible to serve as a member of a military commission when such member is the accuser or a witness for the prosecution or has acted as an investigator or counsel in the same case.

''(c) EXCUSE OF MEMBERS.—Before a military commission under this chapter is assembled for the trial of a case, the convening authority may excuse a member from participating in the case.

''§ 948j. Military judge of a military commission

''(a) DETAIL OF MILITARY JUDGE.—A military judge shall be detailed to each military commission under this chapter. The Secretary of Defense shall prescribe regulations providing for the manner in which military judges are so detailed to military commissions. The military judge shall preside over each military commission to which he has been detailed.

''(b) QUALIFICATIONS.—A military judge shall be a commissioned officer of the armed forces who is a member of the bar of a Federal court, or a member of the bar of the highest court of a State, and who is certified to be qualified for duty under section 826 of this title (article 26 of the Uniform Code of Military Justice) as a military judge in general courts-martial by the Judge Advocate General of the armed force of which such military judge is a member.

''(c) INELIGIBILITY OF CERTAIN INDIVIDUALS.—No person is eligible to act as military judge in a case of a military commission under this chapter if he is the accuser or a witness or has acted as investigator or a counsel in the same case.

''(d) CONSULTATION WITH MEMBERS; INELIGIBILITY TO VOTE.—A military judge detailed to a military commission under this chapter may not consult with the members of the commission except in the presence of the accused (except as otherwise provided in section 949d of this title), trial counsel, and defense counsel, nor may he vote with the members of the commission.

''(e) OTHER DUTIES.—A commissioned officer who is certified to be qualified for duty as a military judge of a military commission under this chapter may perform such other duties as are assigned to him by or with the approval of the Judge Advocate General of the armed force of which such officer is a member or the designee of such Judge Advocate General.

''(f) PROHIBITION ON EVALUATION OF FITNESS BY CONVENING AUTHORITY.—The convening authority of a military commission under this chapter shall not prepare or review any report concerning the effectiveness, fitness, or efficiency of a military judge detailed to the military commission which relates to his performance of duty as a military judge on the military commission.

''§ 948k. Detail of trial counsel and defense counsel

''(a) DETAIL OF COUNSEL GENERALLY.—(1) Trial counsel and military defense counsel shall be detailed for each military commission under this chapter.

''(2) Assistant trial counsel and assistant and associate defense counsel may be detailed for a military commission under this chapter.

''(3) Military defense counsel for a military commission under this chapter shall be detailed as soon as practicable after the swearing of charges against the accused.

''(4) The Secretary of Defense shall prescribe regulations providing for the manner in which trial counsel and military defense counsel are detailed for military commissions under this chapter and for the persons who are authorized to detail such counsel for such commissions.

''(b) TRIAL COUNSEL.—Subject to subsection (e), trial counsel detailed for a military commission under this chapter must be—

''(1) a judge advocate (as that term is defined in section 801 of this title (article 1 of the Uniform Code of Military Justice) who—

''(A) is a graduate of an accredited law school or is a member of the bar of a Federal court or of the highest court of a State; and

''(B) is certified as competent to perform duties as trial counsel before general courts-martial by the Judge Advocate General of the armed force of which he is a member; or

''(2) a civilian who—

''(A) is a member of the bar of a Federal court or of the highest court of a State; and

''(B) is otherwise qualified to practice before the military commission pursuant to regulations prescribed by the Secretary of Defense.

''(c) MILITARY DEFENSE COUNSEL.—Subject to subsection (e), military defense counsel detailed for a military commission under this chapter must be a judge advocate (as so defined) who is—

''(1) a graduate of an accredited law school or is a member of the bar of a Federal court or of the highest court of a State; and

''(2) certified as competent to perform duties as defense counsel before general courts-martial by the Judge Advocate General of the armed force of which he is a member.

''(d) CHIEF PROSECUTOR; CHIEF DEFENSE COUNSEL.—(1) The Chief Prosecutor in a military commission under this chapter shall meet the requirements set forth in subsection (b)(1).

''(2) The Chief Defense Counsel in a military commission under this chapter shall meet the requirements set forth in subsection (c)(1).

''(e) INELIGIBILITY OF CERTAIN INDIVIDUALS.—No person who has acted as an investigator, military judge, or member of a military commission under this chapter in any case may act later as trial counsel or military defense counsel in the same case. No person who has acted for the prosecution before a military commission under this chapter may act later in the same case for the defense, nor may any person who has acted for the defense before a military commission under this chapter act later in the same case for the prosecution.

''§ 948l. Detail or employment of reporters and interpreters

''(a) COURT REPORTERS.—Under such regulations as the Secretary of Defense may prescribe, the convening authority of a military commission under this chapter shall detail to or employ for the commission qualified court reporters, who shall make a verbatim recording of the proceedings of and testimony taken before the commission.

''(b) INTERPRETERS.—Under such regulations as the Secretary of Defense may prescribe, the convening authority of a military commission under this chapter may detail to or employ for the military commission interpreters who shall interpret for the commission and, as necessary, for trial counsel and defense counsel and for the accused.

''(c) TRANSCRIPT; RECORD.—The transcript of a military commission under this chapter shall be under the control of the convening authority of the commission, who shall also be responsible for preparing the record of the proceedings.

''§ 948m. Number of members; excuse of members; absent and additional members

''(a) NUMBER OF MEMBERS.—(1) A military commission under this chapter shall, except as provided in paragraph (2), have at least five members.

''(2) In a case in which the accused before a military commission under this chapter may be sentenced to a penalty of death, the military commission shall have the number of members prescribed by section 949m(c) of this title.

''(b) EXCUSE OF MEMBERS.—No member of a military commission under this chapter may be absent or excused after the military commission has been assembled for the trial of a case unless excused—

''(1) as a result of challenge;

''(2) by the military judge for physical disability or other good cause; or

''(3) by order of the convening authority for good cause.

''(c) ABSENT AND ADDITIONAL MEMBERS.—Whenever a military commission under this chapter is reduced below the number of members required by subsection (a), the trial may not proceed unless the convening authority details new members sufficient to provide not less than such number. The trial may proceed with the new members present after the recorded evidence previously introduced before the members has been read to the military commission in the presence of the military judge, the accused (except as provided in section 949d of this title), and counsel for both sides.

''SUBCHAPTER III—PRE-TRIAL PROCEDURE

''§ 948q. Charges and specifications

''(a) CHARGES AND SPECIFICATIONS.—Charges and specifications against an accused in a military commission under this chapter shall be signed by a person subject to chapter 47 of this title under oath before a commissioned officer of the armed forces authorized to administer oaths and shall state—

''(1) that the signer has personal knowledge of, or reason to believe, the matters set forth therein; and

''(2) that they are true in fact to the best of the signer's knowledge and belief.

''(b) NOTICE TO ACCUSED.—Upon the swearing of the charges and specifications in accordance with subsection (a), the accused shall be informed of the charges against him as soon as practicable.

''§ 948r. Compulsory self-incrimination prohibited; treatment of statements obtained by torture and other statements

''(a) IN GENERAL.—No person shall be required to testify against himself at a proceeding of a military commission under this chapter.

''(b) EXCLUSION OF STATEMENTS OBTAINED BY TORTURE.—A statement obtained by use of torture shall not be admissible in a military commission under this chapter, except against a person accused of torture as evidence that the statement was made.

''(c) STATEMENTS OBTAINED BEFORE ENACTMENT OF DETAINEE TREATMENT ACT OF 2005.—A statement obtained before December 30, 2005 (the date of the enactment of the Defense Treatment Act of 2005) in which the degree of coercion is disputed may be admitted only if the military judge finds that—

''(1) the totality of the circumstances renders the statement reliable and possessing sufficient probative value; and

''(2) the interests of justice would best be served by admission of the statement into evidence.

''(d) STATEMENTS OBTAINED AFTER ENACTMENT OF DETAINEE TREATMENT ACT OF 2005.—A statement obtained on or after December 30, 2005 (the date of the enactment of the Defense Treatment Act of 2005) in which the degree of coercion is disputed may be admitted only if the military judge finds that—

''(1) the totality of the circumstances renders the statement reliable and possessing sufficient probative value;

''(2) the interests of justice would best be served by admission of the statement into evidence; and

''(3) the interrogation methods used to obtain the statement do not amount to cruel, inhuman, or degrading treatment prohibited by section 1003 of the Detainee Treatment Act of 2005.

''§ 948s. Service of charges

''The trial counsel assigned to a case before a military commission under this chapter shall cause to be served upon the accused and military defense counsel a copy of the charges upon which trial is to be had. Such charges shall be served in English and, if appropriate, in another language that the accused understands. Such service shall be made sufficiently in advance of trial to prepare a defense.

''SUBCHAPTER IV—TRIAL PROCEDURE

''§ 949a. Rules

''(a) PROCEDURES AND RULES OF EVIDENCE.—Pretrial, trial, and post-trial procedures, including elements and modes of proof, for cases triable by military commission under this chapter may be prescribed by the Secretary of Defense, in consultation with the Attorney General. Such procedures shall, so far as the Secretary considers practicable or consistent with military or intelligence activities, apply the principles of law and the rules of evidence in trial by general courts-martial. Such procedures and rules of evidence may not be contrary to or inconsistent with this chapter.

''(b) RULES FOR MILITARY COMMISSION.—(1) Notwithstanding any departures from the law and the rules of evidence in trial by general courts-martial authorized by subsection (a), the procedures and rules of evidence in trials by military commission under this chapter shall include the following:

''(A) The accused shall be permitted to present evidence in his defense, to cross-examine the witnesses who testify against him, and to examine and respond to evidence admitted against him on the issue of guilt or innocence and for sentencing, as provided for by this chapter.

''(B) The accused shall be present at all sessions of the military commission (other than those for deliberations or voting), except when excluded under section 949d of this title.

''(C) The accused shall receive the assistance of counsel as provided for by section 948k.

''(D) The accused shall be permitted to represent himself, as provided for by paragraph (3).

''(2) In establishing procedures and rules of evidence for military commission proceedings, the Secretary of Defense may prescribe the following provisions:

''(A) Evidence shall be admissible if the military judge determines that the evidence would have probative value to a reasonable person.

''(B) Evidence shall not be excluded from trial by military commission on the grounds that the evidence was not seized pursuant to a search warrant or other authorization.

''(C) A statement of the accused that is otherwise admissible shall not be excluded from trial by military commission on grounds of alleged coercion or compulsory self-incrimination so long as the evidence

complies with the provisions of section 948r of this title.

''(D) Evidence shall be admitted as authentic so long as—

''(i) the military judge of the military commission determines that there is sufficient basis to find that the evidence is what it is claimed to be; and

''(ii) the military judge instructs the members that they may consider any issue as to authentication or identification of evidence in determining the weight, if any, to be given to the evidence.

''(E)(i) Except as provided in clause (ii), hearsay evidence not otherwise admissible under the rules of evidence applicable in trial by general courts-martial may be admitted in a trial by military commission if the proponent of the evidence makes known to the adverse party, sufficiently in advance to provide the adverse party with a fair opportunity to meet the evidence, the intention of the proponent to offer the evidence, and the particulars of the evidence (including information on the general circumstances under which the evidence was obtained). The disclosure of evidence under the preceding sentence is subject to the requirements and limitations applicable to the disclosure of classified information in section 949j(c) of this title.

''(ii) Hearsay evidence not otherwise admissible under the rules of evidence applicable in trial by general courts-martial shall not be admitted in a trial by military commission if the party opposing the admission of the evidence demonstrates that the evidence is unreliable or lacking in probative value.

''(F) The military judge shall exclude any evidence the probative value of which is substantially outweighed—

''(i) by the danger of unfair prejudice, confusion of the issues, or misleading the commission; or

''(ii) by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

''(3)(A) The accused in a military commission under this chapter who exercises the right to self-representation under paragraph (1)(D) shall conform his deportment and the conduct of the defense to the rules of evidence, procedure, and decorum applicable to trials by military commission.

''(B) Failure of the accused to conform to the rules described in subparagraph (A) may result in a partial or total revocation by the military judge of the right of self-representation under paragraph (1)(D). In such case, the detailed defense counsel of the accused or an appropriately authorized civilian counsel shall perform the functions necessary for the defense.

''(c) DELEGATION OF AUTHORITY TO PRESCRIBE REGULATIONS.—The Secretary of Defense may delegate the authority of the Secretary to prescribe regulations under this chapter.

''(d) NOTIFICATION TO CONGRESSIONAL COMMITTEES OF CHANGES TO PROCEDURES.—Not later than 60 days before the date on which any proposed modification of the procedures in effect for military commissions under this chapter goes into effect, the Secretary of Defense shall submit to the Committee on Armed Services of the Senate and the Committee on Armed Services of the House of Representatives a report describing the modification.

''§ 949b. Unlawfully influencing action of military commission

''(a) IN GENERAL.—(1) No authority convening a military commission under this chapter may censure, reprimand, or admonish the military commission, or any member, military judge, or counsel thereof, with respect to the findings or sentence adjudged by the military commission, or with respect to any other exercises of its or his functions in the conduct of the proceedings.

''(2) No person may attempt to coerce or, by any unauthorized means, influence—

''(A) the action of a military commission under this chapter, or any member thereof, in reaching the findings or sentence in any case;

''(B) the action of any convening, approving, or reviewing authority with respect to his judicial acts; or

''(C) the exercise of professional judgment by trial counsel or defense counsel.

''(3) Paragraphs (1) and (2) do not apply with respect to—

''(A) general instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of military commissions; or

''(B) statements and instructions given in open proceedings by a military judge or counsel.

''(b) PROHIBITION ON CONSIDERATION OF ACTIONS ON COMMISSION IN EVALUATION OF FITNESS.—In the preparation of an effectiveness, fitness, or efficiency report or any other report or document used in whole or in part for the purpose of determining whether a commissioned officer of the armed forces is qualified to be advanced in grade, or in determining the assignment or transfer of any such officer or whether any such officer should be retained on active duty, no person may—

''(1) consider or evaluate the performance of duty of any member of a military commission under this chapter; or

''(2) give a less favorable rating or evaluation to any commissioned officer because of the zeal with which such officer, in acting as counsel, represented any accused before a military commission under this chapter.

''§ 949c. Duties of trial counsel and defense counsel

''(a) TRIAL COUNSEL.—The trial counsel of a military commission under this chapter shall prosecute in the name of the United States.

''(b) DEFENSE COUNSEL.—(1) The accused shall be represented in his defense before a military commission under this chapter as provided in this subsection.

''(2) The accused shall be represented by military counsel detailed under section 948k of this title.

''(3) The accused may be represented by civilian counsel if retained by the accused, but only if such civilian counsel—

''(A) is a United States citizen;

''(B) is admitted to the practice of law in a State, district, or possession of the United States or before a Federal court;

''(C) has not been the subject of any sanction of disciplinary action by any court, bar, or other competent governmental authority for relevant misconduct;

''(D) has been determined to be eligible for access to classified information that is classified at the level Secret or higher; and

''(E) has signed a written agreement to comply with all applicable regulations or instructions for counsel, including any rules of court for conduct during the proceedings.

''(4) Civilian defense counsel shall protect any classified information received during the course of representation of the accused in accordance with all applicable law governing the protection of classified information and may not divulge such information to any person not authorized to receive it.

''(5) If the accused is represented by civilian counsel, detailed military counsel shall act as associate counsel.

''(6) The accused is not entitled to be represented by more than one military counsel. However, the person authorized under regulations prescribed under section 948k of this title to detail counsel, in that person's sole discretion, may detail additional military counsel to represent the accused.

''(7) Defense counsel may cross-examine each witness for the prosecution who testifies before a military commission under this chapter.

''§ 949d. Sessions

''(a) SESSIONS WITHOUT PRESENCE OF MEMBERS.—(1) At any time after the service of charges which have been referred for trial by military commission under this chapter, the military judge may call the military commission into session without the presence of the members for the purpose of—

''(A) hearing and determining motions raising defenses or objections which are capable of determination without trial of the issues raised by a plea of not guilty;

''(B) hearing and ruling upon any matter which may be ruled upon by the military judge under this chapter, whether or not the matter is appropriate for later consideration or decision by the members;

''(C) if permitted by regulations prescribed by the Secretary of Defense, receiving the pleas of the accused; and

''(D) performing any other procedural function which may be performed by the military judge under this chapter or under rules prescribed pursuant to section 949a of this title and which does not require the presence of the members.

''(2) Except as provided in subsections (c) and (e), any proceedings under paragraph (1) shall—

''(A) be conducted in the presence of the accused, defense counsel, and trial counsel; and

''(B) be made part of the record.

''(b) PROCEEDINGS IN PRESENCE OF ACCUSED.—Except as provided in subsections (c) and (e), all proceedings of a military commission under this chapter, including any consultation of the members with the military judge or counsel, shall—

''(1) be in the presence of the accused, defense counsel, and trial counsel; and

''(2) be made a part of the record.

''(c) DELIBERATION OR VOTE OF MEMBERS.—When the members of a military commission under this chapter deliberate or vote, only the members may be present.

''(d) CLOSURE OF PROCEEDINGS.—(1) The military judge may close to the public all or part of the proceedings of a military commission under this chapter, but only in accordance with this subsection.

''(2) The military judge may close to the public all or a portion of the proceedings under paragraph (1) only upon making a specific finding that such closure is necessary to—

''(A) protect information the disclosure of which could reasonably be expected to cause damage to the national security, including intelligence or law enforcement sources, methods, or activities; or

''(B) ensure the physical safety of individuals.

''(3) A finding under paragraph (2) may be based upon a presentation, including a presentation ex parte or in camera, by either trial counsel or defense counsel.

''(e) EXCLUSION OF ACCUSED FROM CERTAIN PROCEEDINGS.—The military judge may exclude the accused from any portion of a proceeding upon a determination that, after being warned by the military judge, the accused persists in conduct that justifies exclusion from the courtroom—

''(1) to ensure the physical safety of individuals; or

''(2) to prevent disruption of the proceedings by the accused.

''(f) PROTECTION OF CLASSIFIED INFORMATION.—

''(1) NATIONAL SECURITY PRIVILEGE.—(A) Classified information shall be protected and is privileged from disclosure if disclosure would be detrimental to the national security. The rule in the preceding sentence applies to all stages of the proceedings of military commissions under this chapter.

''(B) The privilege referred to in subparagraph (A) may be claimed by the head of the executive or military department or government agency concerned based on a finding by the head of that department or agency that—

''(i) the information is properly classified; and

''(ii) disclosure of the information would be detrimental to the national security.

''(C) A person who may claim the privilege referred to in subparagraph (A) may authorize a representative, witness, or trial counsel to claim the privilege and make the finding described in subparagraph (B) on behalf of such person. The authority of the representative, witness, or trial counsel to do so is presumed in the absence of evidence to the contrary.

''(2) INTRODUCTION OF CLASSIFIED INFORMATION.—

''(A) ALTERNATIVES TO DISCLOSURE.—To protect classified information from disclosure, the military judge, upon motion of trial counsel, shall authorize, to the extent practicable—

''(i) the deletion of specified items of classified information from documents to be introduced as evidence before the military commission;

''(ii) the substitution of a portion or summary of the information for such classified documents; or

''(iii) the substitution of a statement of relevant facts that the classified information would tend to prove.

''(B) PROTECTION OF SOURCES, METHODS, OR ACTIVITIES.—The military judge, upon motion of trial counsel, shall permit trial counsel to introduce otherwise admissible evidence before the military commission, while protecting from disclosure the sources, methods, or activities by which the United States acquired the evidence if the military judge finds that (i) the sources, methods, or activities by which the United States acquired the evidence are classified, and (ii) the evidence is reliable. The military judge may require trial counsel to present to the military commission and the defense, to the extent practicable and consistent with national security, an unclassified summary of the sources, methods, or activities by which the United States acquired the evidence.

''(C) ASSERTION OF NATIONAL SECURITY PRIVILEGE AT TRIAL.—During the examination of any witness, trial counsel may object to any question, line of inquiry, or motion to admit evidence that would require the disclosure of classified information. Following such an objection, the military judge shall take suitable action to safeguard such classified information. Such action may include the review of trial counsel's claim of privilege by the military judge in camera and on an ex parte basis, and the delay of proceedings to permit trial counsel to consult with the department or agency concerned as to whether the national security privilege should be asserted.

''(3) CONSIDERATION OF PRIVILEGE AND RELATED MATERIALS.—A claim of privilege under this subsection, and any materials submitted in support thereof, shall, upon request of the Government, be considered by the military judge in camera and shall not be disclosed to the accused.

''(4) ADDITIONAL REGULATIONS.—The Secretary of Defense may prescribe additional regulations, consistent with this subsection, for the use and protection of classified information during proceedings of military commissions under this chapter. A report on any regulations so prescribed, or modified, shall be submitted to the Committees on Armed Services of the Senate and the House of Representatives not later than 60 days before the date on which such regulations or modifications, as the case may be, go into effect.

''§ 949e. Continuances

''The military judge in a military commission under this chapter may, for reasonable cause, grant a continuance to any party for such time, and as often, as may appear to be just.

''§ 949f. Challenges

''(a) CHALLENGES AUTHORIZED.—The military judge and members of a military commission under this chapter may be challenged by the accused or trial counsel for cause stated to the commission. The military judge shall determine the relevance and validity of challenges for cause. The military judge may not receive a challenge to more than one person at a time. Challenges by trial counsel shall ordinarily be presented and decided before those by the accused are offered.

''(b) PEREMPTORY CHALLENGES.—Each accused and the trial counsel are entitled to one peremptory challenge. The military judge may not be challenged except for cause.

''(c) CHALLENGES AGAINST ADDITIONAL MEMBERS.—Whenever additional members are detailed to a military commission under this chapter, and after any challenges for cause against such additional members are presented and decided, each accused and the trial counsel are entitled to one peremptory challenge against members not previously subject to peremptory challenge.

''§ 949g. Oaths

''(a) IN GENERAL.—(1) Before performing their respective duties in a military commission under this chapter, military judges, members, trial counsel, defense counsel, reporters, and interpreters shall take an oath to perform their duties faithfully.

''(2) The form of the oath required by paragraph (1), the time and place of the taking thereof, the manner of recording the same, and whether the oath shall be taken for all cases in which duties are to be performed or for a particular case, shall be as prescribed in regulations of the Secretary of Defense. Those regulations may provide that—

''(A) an oath to perform faithfully duties as a military judge, trial counsel, or defense counsel may be taken at any time by any judge advocate or other person certified to be qualified or competent for the duty; and

''(B) if such an oath is taken, such oath need not again be taken at the time the judge advocate or other person is detailed to that duty.

''(b) WITNESSES.—Each witness before a military commission under this chapter shall be examined on oath.

''§ 949h. Former jeopardy

''(a) IN GENERAL.—No person may, without his consent, be tried by a military commission under this chapter a second time for the same offense.

''(b) SCOPE OF TRIAL.—No proceeding in which the accused has been found guilty by military commission under this chapter upon any charge or specification is a trial in the sense of this section until the finding of guilty has become final after review of the case has been fully completed.

''§ 949i. Pleas of the accused

''(a) ENTRY OF PLEA OF NOT GUILTY.—If an accused in a military commission under this chapter after a plea of guilty sets up matter inconsistent with the plea, or if it appears that the accused has entered the plea of guilty through lack of understanding of its meaning and effect, or if the accused fails or refuses to plead, a plea of not guilty shall be entered in the record, and the military commission shall proceed as though the accused had pleaded not guilty.

''(b) FINDING OF GUILT AFTER GUILTY PLEA.—With respect to any charge or specification to which a plea of guilty has been made by the accused in a military commission under this chapter and accepted by the military judge, a finding of guilty of the charge or specification may be entered immediately without a vote. The finding shall constitute the finding of the commission unless the plea of guilty is withdrawn prior to announcement of the sentence, in which event the proceedings shall continue as though the accused had pleaded not guilty.

''§ 949j. Opportunity to obtain witnesses and other evidence

''(a) RIGHT OF DEFENSE COUNSEL.—Defense counsel in a military commission under this chapter shall have a reasonable opportunity to obtain witnesses and other evidence as provided in regulations prescribed by the Secretary of Defense.

''(b) PROCESS FOR COMPULSION.—Process issued in a military commission under this chapter to compel witnesses to appear and testify and to compel the production of other evidence—

''(1) shall be similar to that which courts of the United States having criminal jurisdiction may lawfully issue; and

''(2) shall run to any place where the United States shall have jurisdiction thereof.

''(c) PROTECTION OF CLASSIFIED INFORMATION.—(1) With respect to the discovery obligations of trial counsel under this section, the military judge, upon motion of trial counsel, shall authorize, to the extent practicable—

''(A) the deletion of specified items of classified information from documents to be made available to the accused;

''(B) the substitution of a portion or summary of the information for such classified documents; or

''(C) the substitution of a statement admitting relevant facts that the classified information would tend to prove.

''(2) The military judge, upon motion of trial counsel, shall authorize trial counsel, in the course of complying with discovery obligations under this section, to protect from disclosure the sources, methods, or activities by which the United States acquired evidence if the military judge finds that the sources, methods, or activities by which the United States acquired such evidence are classified. The military judge may require trial counsel to provide, to the extent practicable, an unclassified summary of the sources, methods, or activities by which the United States acquired such evidence.

''(d) EXCULPATORY EVIDENCE.—(1) As soon as practicable, trial counsel shall disclose to the defense the existence of any evidence known to trial counsel that reasonably tends to exculpate the accused. Where exculpatory evidence is classified, the accused shall be provided with an adequate substitute in accordance with the procedures under subsection (c).

''(2) In this subsection, the term 'evidence known to trial counsel', in the case of exculpatory evidence, means exculpatory evidence that the prosecution would be required to disclose in a trial by general court-martial under chapter 47 of this title.

''§ 949k. Defense of lack of mental responsibility

''(a) AFFIRMATIVE DEFENSE.—It is an affirmative defense in a trial by military commission under this chapter that, at the time

of the commission of the acts constituting the offense, the accused, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of the acts. Mental disease or defect does not otherwise constitute a defense.

''(b) BURDEN OF PROOF.—The accused in a military commission under this chapter has the burden of proving the defense of lack of mental responsibility by clear and convincing evidence.

''(c) FINDINGS FOLLOWING ASSERTION OF DEFENSE.—Whenever lack of mental responsibility of the accused with respect to an offense is properly at issue in a military commission under this chapter, the military judge shall instruct the members of the commission as to the defense of lack of mental responsibility under this section and shall charge them to find the accused—

''(1) guilty;

''(2) not guilty; or

''(3) subject to subsection (d), not guilty by reason of lack of mental responsibility.

''(d) MAJORITY VOTE REQUIRED FOR FINDING.—The accused shall be found not guilty by reason of lack of mental responsibility under subsection (c)(3) only if a majority of the members present at the time the vote is taken determines that the defense of lack of mental responsibility has been established.

''§ 949l. Voting and rulings

''(a) VOTE BY SECRET WRITTEN BALLOT.—Voting by members of a military commission under this chapter on the findings and on the sentence shall be by secret written ballot.

''(b) RULINGS.—(1) The military judge in a military commission under this chapter shall rule upon all questions of law, including the admissibility of evidence and all interlocutory questions arising during the proceedings.

''(2) Any ruling made by the military judge upon a question of law or an interlocutory question (other than the factual issue of mental responsibility of the accused) is conclusive and constitutes the ruling of the military commission. However, a military judge may change his ruling at any time during the trial.

''(c) INSTRUCTIONS PRIOR TO VOTE.—Before a vote is taken of the findings of a military commission under this chapter, the military judge shall, in the presence of the accused and counsel, instruct the members as to the elements of the offense and charge the members—

''(1) that the accused must be presumed to be innocent until his guilt is established by legal and competent evidence beyond a reasonable doubt;

''(2) that in the case being considered, if there is a reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and he must be acquitted;

''(3) that, if there is reasonable doubt as to the degree of guilt, the finding must be in a lower degree as to which there is no reasonable doubt; and

''(4) that the burden of proof to establish the guilt of the accused beyond a reasonable doubt is upon the United States.

''§ 949m. Number of votes required

''(a) CONVICTION.—No person may be convicted by a military commission under this chapter of any offense, except as provided in section 949i(b) of this title or by concurrence of two-thirds of the members present at the time the vote is taken.

''(b) SENTENCES.—(1) No person may be sentenced by a military commission to suffer death, except insofar as—

''(A) the penalty of death is expressly authorized under this chapter or the law of war for an offense of which the accused has been found guilty;

''(B) trial counsel expressly sought the penalty of death by filing an appropriate notice in advance of trial;

''(C) the accused is convicted of the offense by the concurrence of all the members present at the time the vote is taken; and

''(D) all the members present at the time the vote is taken concur in the sentence of death.

''(2) No person may be sentenced to life imprisonment, or to confinement for more than 10 years, by a military commission under this chapter except by the concurrence of three-fourths of the members present at the time the vote is taken.

''(3) All other sentences shall be determined by a military commission by the concurrence of two-thirds of the members present at the time the vote is taken.

''(c) NUMBER OF MEMBERS REQUIRED FOR PENALTY OF DEATH.—(1) Except as provided in paragraph (2), in a case in which the penalty of death is sought, the number of members of the military commission under this chapter shall be not less than 12.

''(2) In any case described in paragraph (1) in which 12 members are not reasonably available because of physical conditions or military exigencies, the convening authority shall specify a lesser number of members for the military commission (but not fewer than 9 members), and the military commission may be assembled, and the trial held, with not fewer than the number of members so specified. In such a case, the convening authority shall make a detailed written statement, to be appended to the record, stating why a greater number of members were not reasonably available.

''§ 949n. Military commission to announce action

''A military commission under this chapter shall announce its findings and sentence to the parties as soon as determined.

''§ 949o. Record of trial

''(a) RECORD; AUTHENTICATION.—Each military commission under this chapter shall keep a separate, verbatim, record of the proceedings in each case brought before it, and the record shall be authenticated by the signature of the military judge. If the record cannot be authenticated by the military judge by reason of his death, disability, or absence, it shall be authenticated by the signature of the trial counsel or by a member of the commission if the trial counsel is unable to authenticate it by reason of his death, disability, or absence. Where appropriate, and as provided in regulations prescribed by the Secretary of Defense, the record of a military commission under this chapter may contain a classified annex.

''(b) COMPLETE RECORD REQUIRED.—A complete record of the proceedings and testimony shall be prepared in every military commission under this chapter.

''(c) PROVISION OF COPY TO ACCUSED.—A copy of the record of the proceedings of the military commission under this chapter shall be given the accused as soon as it is authenticated. If the record contains classified information, or a classified annex, the accused shall be given a redacted version of the record consistent with the requirements of section 949d of this title. Defense counsel shall have access to the unredacted record, as provided in regulations prescribed by the Secretary of Defense.

''SUBCHAPTER V—SENTENCES

''§ 949s. Cruel or unusual punishments prohibited

''Punishment by flogging, or by branding, marking, or tattooing on the body, or any other cruel or unusual punishment, may not be adjudged by a military commission under this chapter or inflicted under this chapter upon any person subject to this chapter. The use of irons, single or double, except for the purpose of safe custody, is prohibited under this chapter.

''§ 949t. Maximum limits

''The punishment which a military commission under this chapter may direct for an offense may not exceed such limits as the President or Secretary of Defense may prescribe for that offense.

''§ 949u. Execution of confinement

''(a) IN GENERAL.—Under such regulations as the Secretary of Defense may prescribe, a sentence of confinement adjudged by a military commission under this chapter may be carried into execution by confinement—

''(1) in any place of confinement under the control of any of the armed forces; or

''(2) in any penal or correctional institution under the control of the United States or its allies, or which the United States may be allowed to use.

''(b) TREATMENT DURING CONFINEMENT BY OTHER THAN THE ARMED FORCES.—Persons confined under subsection (a)(2) in a penal or correctional institution not under the control of an armed force are subject to the same discipline and treatment as persons confined or committed by the courts of the United States or of the State, District of Columbia, or place in which the institution is situated.

''SUBCHAPTER VI—POST-TRIAL PROCEDURE AND REVIEW OF MILITARY COMMISSIONS

''§ 950a. Error of law; lesser included offense

''(a) ERROR OF LAW.—A finding or sentence of a military commission under this chapter may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

''(b) LESSER INCLUDED OFFENSE.—Any reviewing authority with the power to approve or affirm a finding of guilty by a military commission under this chapter may approve or affirm, instead, so much of the finding as includes a lesser included offense.

''§ 950b. Review by the convening authority

''(a) NOTICE TO CONVENING AUTHORITY OF FINDINGS AND SENTENCE.—The findings and sentence of a military commission under this chapter shall be reported in writing promptly to the convening authority after the announcement of the sentence.

''(b) SUBMITTAL OF MATTERS BY ACCUSED TO CONVENING AUTHORITY.—(1) The accused may submit to the convening authority matters for consideration by the convening authority with respect to the findings and the sentence

of the military commission under this chapter.

''(2)(A) Except as provided in subparagraph (B), a submittal under paragraph (1) shall be made in writing within 20 days after the accused has been given an authenticated record of trial under section 949o(c) of this title.

''(B) If the accused shows that additional time is required for the accused to make a submittal under paragraph (1), the convening authority may, for good cause, extend the applicable period under subparagraph (A) for not more than an additional 20 days.

''(3) The accused may waive his right to make a submittal to the convening authority under paragraph (1). Such a waiver shall be made in writing and may not be revoked. For the purposes of subsection (c)(2), the time within which the accused may make a submittal under this subsection shall be deemed to have expired upon the submittal of a waiver under this paragraph to the convening authority.

''(c) ACTION BY CONVENING AUTHORITY.—(1) The authority under this subsection to modify the findings and sentence of a military commission under this chapter is a matter of the sole discretion and prerogative of the convening authority.

''(2)(A) The convening authority shall take action on the sentence of a military commission under this chapter.

''(B) Subject to regulations prescribed by the Secretary of Defense, action on the sentence under this paragraph may be taken only after consideration of any matters submitted by the accused under subsection (b) or after the time for submitting such matters expires, whichever is earlier.

''(C) In taking action under this paragraph, the convening authority may, in his sole discretion, approve, disapprove, commute, or suspend the sentence in whole or in part. The convening authority may not increase a sentence beyond that which is found by the military commission.

''(3) The convening authority is not required to take action on the findings of a military commission under this chapter. If the convening authority takes action on the findings, the convening authority may, in his sole discretion, may—

''(A) dismiss any charge or specification by setting aside a finding of guilty thereto; or

''(B) change a finding of guilty to a charge to a finding of guilty to an offense that is a lesser included offense of the offense stated in the charge.

''(4) The convening authority shall serve on the accused or on defense counsel notice of any action taken by the convening authority under this subsection.

''(d) ORDER OF REVISION OR REHEARING.—(1) Subject to paragraphs (2) and (3), the convening authority of a military commission under this chapter may, in his sole discretion, order a proceeding in revision or a rehearing.

''(2)(A) Except as provided in subparagraph (B), a proceeding in revision may be ordered by the convening authority if—

''(i) there is an apparent error or omission in the record; or

''(ii) the record shows improper or inconsistent action by the military commission with respect to the findings or sentence that can be rectified without material prejudice to the substantial rights of the accused.

''(B) In no case may a proceeding in revision—

''(i) reconsider a finding of not guilty of a specification or a ruling which amounts to a finding of not guilty;

''(ii) reconsider a finding of not guilty of any charge, unless there has been a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation; or

''(iii) increase the severity of the sentence unless the sentence prescribed for the offense is mandatory.

''(3) A rehearing may be ordered by the convening authority if the convening authority disapproves the findings and sentence and states the reasons for disapproval of the findings. If the convening authority disapproves the finding and sentence and does not order a rehearing, the convening authority shall dismiss the charges. A rehearing as to the findings may not be ordered by the convening authority when there is a lack of sufficient evidence in the record to support the findings. A rehearing as to the sentence may be ordered by the convening authority if the convening authority disapproves the sentence.

''§ 950c. Appellate referral; waiver or withdrawal of appeal

''(a) AUTOMATIC REFERRAL FOR APPELLATE REVIEW.—Except as provided under subsection (b), in each case in which the final decision of a military commission (as approved by the convening authority) includes a finding of guilty, the convening authority shall refer the case to the Court of Military Commission Review. Any such referral shall be made in accordance with procedures prescribed under regulations of the Secretary.

''(b) WAIVER OF RIGHT OF REVIEW.—(1) In each case subject to appellate review under section 950f of this title, except a case in which the sentence as approved under section 950b of this title extends to death, the accused may file with the convening authority a statement expressly waiving the right of the accused to such review.

''(2) A waiver under paragraph (1) shall be signed by both the accused and a defense counsel.

''(3) A waiver under paragraph (1) must be filed, if at all, within 10 days after notice on the action is served on the accused or on defense counsel under section 950b(c)(4) of this title. The convening authority, for good cause, may extend the period for such filing by not more than 30 days.

''(c) WITHDRAWAL OF APPEAL.—Except in a case in which the sentence as approved under section 950b of this title extends to death, the accused may withdraw an appeal at any time.

''(d) EFFECT OF WAIVER OR WITHDRAWAL.—A waiver of the right to appellate review or the withdrawal of an appeal under this section bars review under section 950f of this title.

''§ 950d. Appeal by the United States

''(a) INTERLOCUTORY APPEAL.—(1) Except as provided in paragraph (2), in a trial by military commission under this chapter, the United States may take an interlocutory appeal to the Court of Military Commission Review of any order or ruling of the military judge that—

''(A) terminates proceedings of the military commission with respect to a charge or specification;

''(B) excludes evidence that is substantial proof of a fact material in the proceeding; or

''(C) relates to a matter under subsection (d), (e), or (f) of section 949d of this title or section 949j(c) of this title.

''(2) The United States may not appeal under paragraph (1) an order or ruling that is, or amounts to, a finding of not guilty by the military commission with respect to a charge or specification.

''(b) NOTICE OF APPEAL.—The United States shall take an appeal of an order or ruling under subsection (a) by filing a notice of appeal with the military judge within five days after the date of such order or ruling.

''(c) APPEAL.—An appeal under this section shall be forwarded, by means specified in regulations prescribed the Secretary of Defense, directly to the Court of Military Commission Review. In ruling on an appeal under this section, the Court may act only with respect to matters of law.

''(d) APPEAL FROM ADVERSE RULING.—The United States may appeal an adverse ruling on an appeal under subsection (c) to the United States Court of Appeals for the District of Columbia Circuit by filing a petition for review in the Court of Appeals within 10 days after the date of such ruling. Review under this subsection shall be at the discretion of the Court of Appeals.

''§ 950e. Rehearings

''(a) COMPOSITION OF MILITARY COMMISSION FOR REHEARING.—Each rehearing under this chapter shall take place before a military commission under this chapter composed of members who were not members of the military commission which first heard the case.

''(b) SCOPE OF REHEARING.—(1) Upon a rehearing—

''(A) the accused may not be tried for any offense of which he was found not guilty by the first military commission; and

''(B) no sentence in excess of or more than the original sentence may be imposed unless—

''(i) the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings; or

''(ii) the sentence prescribed for the offense is mandatory.

''(2) Upon a rehearing, if the sentence approved after the first military commission was in accordance with a pretrial agreement and the accused at the rehearing changes his plea with respect to the charges or specifications upon which the pretrial agreement was based, or otherwise does not comply with pretrial agreement, the sentence as to those charges or specifications may include any punishment not in excess of that lawfully adjudged at the first military commission.

''§ 950f. Review by Court of Military Commission Review

''(a) ESTABLISHMENT.—The Secretary of Defense shall establish a Court of Military Commission Review which shall be composed of one or more panels, and each such panel shall be composed of not less than three appellate military judges. For the purpose of reviewing military commission decisions under this chapter, the court may sit in panels or as a whole in accordance with rules prescribed by the Secretary.

''(b) APPELLATE MILITARY JUDGES.—The Secretary shall assign appellate military judges to a Court of Military Commission Review. Each appellate military judge shall meet the qualifications for military judges prescribed by section 948j(b) of this title or shall be a civilian with comparable qualifications. No person may be serve as an appellate military judge in any case in which that person acted as a military judge, counsel, or reviewing official.

''(c) CASES TO BE REVIEWED.—The Court of Military Commission Review, in accordance with procedures prescribed under regulations of the Secretary, shall review the record in each case that is referred to the Court by the convening authority under section 950c of this title with respect to any matter of law raised by the accused.

''(d) SCOPE OF REVIEW.—In a case reviewed by the Court of Military Commission Review under this section, the Court may act only with respect to matters of law.

''§ 950g. Review by the United States Court of Appeals for the District of Columbia Circuit and the Supreme Court

''(a) EXCLUSIVE APPELLATE JURISDICTION.—(1)(A) Except as provided in subparagraph (B), the United States Court of Appeals for the District of Columbia Circuit shall have

exclusive jurisdiction to determine the validity of a final judgment rendered by a military commission (as approved by the convening authority) under this chapter.

''(B) The Court of Appeals may not review the final judgment until all other appeals under this chapter have been waived or exhausted.

''(2) A petition for review must be filed by the accused in the Court of Appeals not later than 20 days after the date on which—

''(A) written notice of the final decision of the Court of Military Commission Review is served on the accused or on defense counsel; or

''(B) the accused submits, in the form prescribed by section 950c of this title, a written notice waiving the right of the accused to review by the Court of Military Commission Review under section 950f of this title.

''(b) STANDARD FOR REVIEW.—In a case reviewed by it under this section, the Court of Appeals may act only with respect to matters of law.

''(c) SCOPE OF REVIEW.—The jurisdiction of the Court of Appeals on an appeal under subsection (a) shall be limited to the consideration of—

''(1) whether the final decision was consistent with the standards and procedures specified in this chapter; and

''(2) to the extent applicable, the Constitution and the laws of the United States.

''(d) SUPREME COURT.—The Supreme Court may review by writ of certiorari the final judgment of the Court of Appeals pursuant to section 1257 of title 28.

''§ 950h. Appellate counsel

''(a) APPOINTMENT.—The Secretary of Defense shall, by regulation, establish procedures for the appointment of appellate counsel for the United States and for the accused in military commissions under this chapter. Appellate counsel shall meet the qualifications for counsel appearing before military commissions under this chapter.

''(b) REPRESENTATION OF UNITED STATES.—Appellate counsel appointed under subsection (a)—

''(1) shall represent the United States in any appeal or review proceeding under this chapter before the Court of Military Commission Review; and

''(2) may, when requested to do so by the Attorney General in a case arising under this chapter, represent the United States before the United States Court of Appeals for the District of Columbia Circuit or the Supreme Court.

''(c) REPRESENTATION OF ACCUSED.—The accused shall be represented by appellate counsel appointed under subsection (a) before the Court of Military Commission Review, the United States Court of Appeals for the District of Columbia Circuit, and the Supreme Court, and by civilian counsel if retained by the accused. Any such civilian counsel shall meet the qualifications under paragraph (3) of section 949c(b) of this title for civilian counsel appearing before military commissions under this chapter and shall be subject to the requirements of paragraph (4) of that section.

''§ 950i. Execution of sentence; procedures for execution of sentence of death

''(a) IN GENERAL.—The Secretary of Defense is authorized to carry out a sentence imposed by a military commission under this chapter in accordance with such procedures as the Secretary may prescribe.

''(b) EXECUTION OF SENTENCE OF DEATH ONLY UPON APPROVAL BY THE PRESIDENT.—If the sentence of a military commission under this chapter extends to death, that part of the sentence providing for death may not be executed until approved by the President. In such a case, the President may commute, remit, or suspend the sentence, or any part thereof, as he sees fit.

''(c) EXECUTION OF SENTENCE OF DEATH ONLY UPON FINAL JUDGMENT OF LEGALITY OF PROCEEDINGS.—(1) If the sentence of a military commission under this chapter extends to death, the sentence may not be executed until there is a final judgment as to the legality of the proceedings (and with respect to death, approval under subsection (b)).

''(2) A judgment as to legality of proceedings is final for purposes of paragraph (1) when—

''(A) the time for the accused to file a petition for review by the Court of Appeals for the District of Columbia Circuit has expired and the accused has not filed a timely petition for such review and the case is not otherwise under review by that Court; or

''(B) review is completed in accordance with the judgment of the United States Court of Appeals for the District of Columbia Circuit and—

''(i) a petition for a writ of certiorari is not timely filed;

''(ii) such a petition is denied by the Supreme Court; or

''(iii) review is otherwise completed in accordance with the judgment of the Supreme Court.

''(d) SUSPENSION OF SENTENCE.—The Secretary of the Defense, or the convening authority acting on the case (if other than the Secretary), may suspend the execution of any sentence or part thereof in the case, except a sentence of death.

''§ 950j. Finality or proceedings, findings, and sentences

''(a) FINALITY.—The appellate review of records of trial provided by this chapter, and the proceedings, findings, and sentences of military commissions as approved, reviewed, or affirmed as required by this chapter, are final and conclusive. Orders publishing the proceedings of military commissions under this chapter are binding upon all departments, courts, agencies, and officers of the United States, except as otherwise provided by the President.

''(b) PROVISIONS OF CHAPTER SOLE BASIS FOR REVIEW OF MILITARY COMMISSION PROCEDURES AND ACTIONS.—Except as otherwise provided in this chapter and notwithstanding any other provision of law (including section 2241 of title 28 or any other habeas corpus provision), no court, justice, or judge shall have jurisdiction to hear or consider any claim or cause of action whatsoever, including any action pending on or filed after the date of the enactment of the Military Commissions Act of 2006, relating to the prosecution, trial, or judgment of a military commission under this chapter, including challenges to the lawfulness of procedures of military commissions under this chapter.

''SUBCHAPTER VII—PUNITIVE MATTERS

''Sec.
''950p. Statement of substantive offenses.
''950q. Principals.
''950r. Accessory after the fact.
''950s. Conviction of lesser included offense.
''950t. Attempts.
''950u. Solicitation.
''950v. Crimes triable by military commissions.
''950w. Perjury and obstruction of justice; contempt.

''§ 950p. Statement of substantive offenses

''(a) PURPOSE.—The provisions of this subchapter codify offenses that have traditionally been triable by military commissions. This chapter does not establish new crimes that did not exist before its enactment, but rather codifies those crimes for trial by military commission.

''(b) EFFECT.—Because the provisions of this subchapter (including provisions that incorporate definitions in other provisions of law) are declarative of existing law, they do not preclude trial for crimes that occurred before the date of the enactment of this chapter.

''§ 950q. Principals

''Any person is punishable as a principal under this chapter who—

''(1) commits an offense punishable by this chapter, or aids, abets, counsels, commands, or procures its commission;

''(2) causes an act to be done which if directly performed by him would be punishable by this chapter; or

''(3) is a superior commander who, with regard to acts punishable under this chapter, knew, had reason to know, or should have known, that a subordinate was about to commit such acts or had done so and who failed to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

''§ 950r. Accessory after the fact

''Any person subject to this chapter who, knowing that an offense punishable by this chapter has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment shall be punished as a military commission under this chapter may direct.

''§ 950s. Conviction of lesser included offense

''An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an attempt to commit either the offense charged or an offense necessarily included therein.

''§ 950t. Attempts

''(a) IN GENERAL.—Any person subject to this chapter who attempts to commit any offense punishable by this chapter shall be punished as a military commission under this chapter may direct.

''(b) SCOPE OF OFFENSE.—An act, done with specific intent to commit an offense under this chapter, amounting to more than mere preparation and tending, even though failing, to effect its commission, is an attempt to commit that offense.

''(c) EFFECT OF CONSUMMATION.—Any person subject to this chapter may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated.

''§ 950u. Solicitation

''Any person subject to this chapter who solicits or advises another or others to commit one or more substantive offenses triable by military commission under this chapter shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed or attempted, he shall be punished as a military commission under this chapter may direct.

''§ 950v. Crimes triable by military commissions

''(a) DEFINITIONS AND CONSTRUCTION.—In this section:

''(1) MILITARY OBJECTIVE.—The term 'military objective' means—

''(A) combatants; and

''(B) those objects during an armed conflict—

''(i) which, by their nature, location, purpose, or use, effectively contribute to the opposing force's war-fighting or war-sustaining capability; and

''(ii) the total or partial destruction, capture, or neutralization of which would constitute a definite military advantage to the attacker under the circumstances at the time of the attack.

''(2) PROTECTED PERSON.—The term 'protected person' means any person entitled to

protection under one or more of the Geneva Conventions, including—

''(A) civilians not taking an active part in hostilities;

''(B) military personnel placed hors de combat by sickness, wounds, or detention; and

''(C) military medical or religious personnel.

''(3) PROTECTED PROPERTY.—The term 'protected property' means property specifically protected by the law of war (such as buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals, or places where the sick and wounded are collected), if such property is not being used for military purposes or is not otherwise a military objective. Such term includes objects properly identified by one of the distinctive emblems of the Geneva Conventions, but does not include civilian property that is a military objective.

''(4) CONSTRUCTION.—The intent specified for an offense under paragraph (1), (2), (3), (4), or (12) of subsection (b) precludes the applicability of such offense with regard to—

''(A) collateral damage; or

''(B) death, damage, or injury incident to a lawful attack.

''(b) OFFENSES.—The following offenses shall be triable by military commission under this chapter at any time without limitation:

''(1) MURDER OF PROTECTED PERSONS.—Any person subject to this chapter who intentionally kills one or more protected persons shall be punished by death or such other punishment as a military commission under this chapter may direct.

''(2) ATTACKING CIVILIANS.—Any person subject to this chapter who intentionally engages in an attack upon a civilian population as such, or individual civilians not taking active part in hostilities, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(3) ATTACKING CIVILIAN OBJECTS.—Any person subject to this chapter who intentionally engages in an attack upon a civilian object that is not a military objective shall be punished as a military commission under this chapter may direct.

''(4) ATTACKING PROTECTED PROPERTY.—Any person subject to this chapter who intentionally engages in an attack upon protected property shall be punished as a military commission under this chapter may direct.

''(5) PILLAGING.—Any person subject to this chapter who intentionally and in the absence of military necessity appropriates or seizes property for private or personal use, without the consent of a person with authority to permit such appropriation or seizure, shall be punished as a military commission under this chapter may direct.

''(6) DENYING QUARTER.—Any person subject to this chapter who, with effective command or control over subordinate groups, declares, orders, or otherwise indicates to those groups that there shall be no survivors or surrender accepted, with the intent to threaten an adversary or to conduct hostilities such that there would be no survivors or surrender accepted, shall be punished as a military commission under this chapter may direct.

''(7) TAKING HOSTAGES.—Any person subject to this chapter who, having knowingly seized or detained one or more persons, threatens to kill, injure, or continue to detain such person or persons with the intent of compelling any nation, person other than the hostage, or group of persons to act or refrain from acting as an explicit or implicit condition for the safety or release of such person or persons, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(8) EMPLOYING POISON OR SIMILAR WEAPONS.—Any person subject to this chapter who intentionally, as a method of warfare, employs a substance or weapon that releases a substance that causes death or serious and lasting damage to health in the ordinary course of events, through its asphyxiating, bacteriological, or toxic properties, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(9) USING PROTECTED PERSONS AS A SHIELD.—Any person subject to this chapter who positions, or otherwise takes advantage of, a protected person with the intent to shield a military objective from attack, or to shield, favor, or impede military operations, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(10) USING PROTECTED PROPERTY AS A SHIELD.—Any person subject to this chapter who positions, or otherwise takes advantage of the location of, protected property with the intent to shield a military objective from attack, or to shield, favor, or impede military operations, shall be punished as a military commission under this chapter may direct.

''(11) TORTURE.—

''(A) OFFENSE.—Any person subject to this chapter who commits an act specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control for the purpose of obtaining information or a confession, punishment, intimidation, coercion, or any reason based on discrimination of any kind, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(B) SEVERE MENTAL PAIN OR SUFFERING DEFINED.—In this section, the term 'severe mental pain or suffering' has the meaning given that term in section 2340(2) of title 18.

''(12) CRUEL OR INHUMAN TREATMENT.—

''(A) OFFENSE.—Any person subject to this chapter who commits an act intended to inflict severe or serious physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions), including serious physical abuse, upon another within his custody or control shall be punished, if death results to the victim, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to the victim, by such punishment, other than death, as a military commission under this chapter may direct.

''(B) DEFINITIONS.—In this paragraph:

''(i) The term 'serious physical pain or suffering' means bodily injury that involves—

''(I) a substantial risk of death;

''(II) extreme physical pain;

''(III) a burn or physical disfigurement of a serious nature (other than cuts, abrasions, or bruises); or

''(IV) significant loss or impairment of the function of a bodily member, organ, or mental faculty.

''(ii) The term 'severe mental pain or suffering' has the meaning given that term in section 2340(2) of title 18.

''(iii) The term 'serious mental pain or suffering' has the meaning given the term 'severe mental pain or suffering' in section 2340(2) of title 18, except that—

''(I) the term 'serious' shall replace the term 'severe' where it appears; and

''(II) as to conduct occurring after the date of the enactment of the Military Commissions Act of 2006, the term 'serious and nontransitory mental harm (which need not be prolonged)' shall replace the term 'prolonged mental harm' where it appears.

''(13) INTENTIONALLY CAUSING SERIOUS BODILY INJURY.—

''(A) OFFENSE.—Any person subject to this chapter who intentionally causes serious bodily injury to one or more persons, including lawful combatants, in violation of the law of war shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(B) SERIOUS BODILY INJURY DEFINED.—In this paragraph, the term 'serious bodily injury' means bodily injury which involves—

''(i) a substantial risk of death;

''(ii) extreme physical pain;

''(iii) protracted and obvious disfigurement; or

''(iv) protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

''(14) MUTILATING OR MAIMING.—Any person subject to this chapter who intentionally injures one or more protected persons by disfiguring the person or persons by any mutilation of the person or persons, or by permanently disabling any member, limb, or organ of the body of the person or persons, without any legitimate medical or dental purpose, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(15) MURDER IN VIOLATION OF THE LAW OF WAR.—Any person subject to this chapter who intentionally kills one or more persons, including lawful combatants, in violation of the law of war shall be punished by death or such other punishment as a military commission under this chapter may direct.

''(16) DESTRUCTION OF PROPERTY IN VIOLATION OF THE LAW OF WAR.—Any person subject to this chapter who intentionally destroys property belonging to another person in violation of the law of war shall punished as a military commission under this chapter may direct.

''(17) USING TREACHERY OR PERFIDY.—Any person subject to this chapter who, after inviting the confidence or belief of one or more persons that they were entitled to, or obliged to accord, protection under the law of war, intentionally makes use of that confidence or belief in killing, injuring, or capturing such person or persons shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of

the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(18) IMPROPERLY USING A FLAG OF TRUCE.—Any person subject to this chapter who uses a flag of truce to feign an intention to negotiate, surrender, or otherwise suspend hostilities when there is no such intention shall be punished as a military commission under this chapter may direct.

''(19) IMPROPERLY USING A DISTINCTIVE EMBLEM.—Any person subject to this chapter who intentionally uses a distinctive emblem recognized by the law of war for combatant purposes in a manner prohibited by the law of war shall be punished as a military commission under this chapter may direct.

''(20) INTENTIONALLY MISTREATING A DEAD BODY.—Any person subject to this chapter who intentionally mistreats the body of a dead person, without justification by legitimate military necessity, shall be punished as a military commission under this chapter may direct.

''(21) RAPE.—Any person subject to this chapter who forcibly or with coercion or threat of force wrongfully invades the body of a person by penetrating, however slightly, the anal or genital opening of the victim with any part of the body of the accused, or with any foreign object, shall be punished as a military commission under this chapter may direct.

''(22) SEXUAL ASSAULT OR ABUSE.—Any person subject to this chapter who forcibly or with coercion or threat of force engages in sexual contact with one or more persons, or causes one or more persons to engage in sexual contact, shall be punished as a military commission under this chapter may direct.

''(23) HIJACKING OR HAZARDING A VESSEL OR AIRCRAFT.—Any person subject to this chapter who intentionally seizes, exercises unauthorized control over, or endangers the safe navigation of a vessel or aircraft that is not a legitimate military objective shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(24) TERRORISM.—Any person subject to this chapter who intentionally kills or inflicts great bodily harm on one or more protected persons, or intentionally engages in an act that evinces a wanton disregard for human life, in a manner calculated to influence or affect the conduct of government or civilian population by intimidation or coercion, or to retaliate against government conduct, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''(25) PROVIDING MATERIAL SUPPORT FOR TERRORISM.—

''(A) OFFENSE.—Any person subject to this chapter who provides material support or resources, knowing or intending that they are to be used in preparation for, or in carrying out, an act of terrorism (as set forth in paragraph (24)), or who intentionally provides material support or resources to an international terrorist organization engaged in hostilities against the United States, knowing that such organization has engaged or engages in terrorism (as so set forth), shall be punished as a military commission under this chapter may direct.

''(B) MATERIAL SUPPORT OR RESOURCES DEFINED.—In this paragraph, the term 'material support or resources' has the meaning given that term in section 2339A(b) of title 18.

''(26) WRONGFULLY AIDING THE ENEMY.—Any person subject to this chapter who, in breach of an allegiance or duty to the United States, knowingly and intentionally aids an enemy of the United States, or one of the co-belligerents of the enemy, shall be punished as a military commission under this chapter may direct.

''(27) SPYING.—Any person subject to this chapter who with intent or reason to believe that it is to be used to the injury of the United States or to the advantage of a foreign power, collects or attempts to collect information by clandestine means or while acting under false pretenses, for the purpose of conveying such information to an enemy of the United States, or one of the co-belligerents of the enemy, shall be punished by death or such other punishment as a military commission under this chapter may direct.

''(28) CONSPIRACY.—Any person subject to this chapter who conspires to commit one or more substantive offenses triable by military commission under this chapter, and who knowingly does any overt act to effect the object of the conspiracy, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

''§ 950w. Perjury and obstruction of justice; contempt

''(a) PERJURY AND OBSTRUCTION OF JUSTICE.—A military commission under this chapter may try offenses and impose such punishment as the military commission may direct for perjury, false testimony, or obstruction of justice related to military commissions under this chapter.

''(b) CONTEMPT.—A military commission under this chapter may punish for contempt any person who uses any menacing word, sign, or gesture in its presence, or who disturbs its proceedings by any riot or disorder.''.

(2) TABLES OF CHAPTERS AMENDMENTS.—The tables of chapters at the beginning of subtitle A, and at the beginning of part II of subtitle A, of title 10, United States Code, are each amended by inserting after the item relating to chapter 47 the following new item:

''47A. Military Commissions ..... 948a.''.

(b) SUBMITTAL OF PROCEDURES TO CONGRESS.—Not later than 90 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committees on Armed Services of the Senate and the House of Representatives a report setting forth the procedures for military commissions prescribed under chapter 47A of title 10, United States Code (as added by subsection (a)).

SEC. 4. AMENDMENTS TO UNIFORM CODE OF MILITARY JUSTICE.

(a) CONFORMING AMENDMENTS.—Chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), is amended as follows:

(1) APPLICABILITY TO LAWFUL ENEMY COMBATANTS.—Section 802(a) (article 2(a)) is amended by adding at the end the following new paragraph:

''(13) Lawful enemy combatants (as that term is defined in section 948a(2) of this title) who violate the law of war.''.

(2) EXCLUSION OF APPLICABILITY TO CHAPTER 47A COMMISSIONS.—Sections 821, 828, 848, 850(a), 904, and 906 (articles 21, 28, 48, 50(a), 104, and 106) are amended by adding at the end the following new sentence: ''This section does not apply to a military commission established under chapter 47A of this title.''.

(3) INAPPLICABILITY OF REQUIREMENTS RELATING TO REGULATIONS.—Section 836 (article 36) is amended—

(A) in subsection (a), by inserting '', except as provided in chapter 47A of this title,'' after ''but which may not''; and

(B) in subsection (b), by inserting before the period at the end '', except insofar as applicable to military commissions established under chapter 47A of this title''.

(b) PUNITIVE ARTICLE OF CONSPIRACY.—Section 881 of title 10, United States Code (article 81 of the Uniform Code of Military Justice), is amended—

(1) by inserting ''(a)'' before ''Any person''; and

(2) by adding at the end the following new subsection:

''(b) Any person subject to this chapter who conspires with any other person to commit an offense under the law of war, and who knowingly does an overt act to effect the object of the conspiracy, shall be punished, if death results to one or more of the victims, by death or such other punishment as a court-martial or military commission may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a court-martial or military commission may direct.''.

SEC. 5. TREATY OBLIGATIONS NOT ESTABLISHING GROUNDS FOR CERTAIN CLAIMS.

(a) IN GENERAL.—No person may invoke the Geneva Conventions or any protocols thereto in any habeas corpus or other civil action or proceeding to which the United States, or a current or former officer, employee, member of the Armed Forces, or other agent of the United States is a party as a source of rights in any court of the United States or its States or territories.

(b) GENEVA CONVENTIONS DEFINED.—In this section, the term ''Geneva Conventions'' means—

(1) the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, done at Geneva August 12, 1949 (6 UST 3114);

(2) the Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea, done at Geneva August 12, 1949 (6 UST 3217);

(3) the Convention Relative to the Treatment of Prisoners of War, done at Geneva August 12, 1949 (6 UST 3316); and

(4) the Convention Relative to the Protection of Civilian Persons in Time of War, done at Geneva August 12, 1949 (6 UST 3516).

SEC. 6. IMPLEMENTATION OF TREATY OBLIGATIONS.

(a) IMPLEMENTATION OF TREATY OBLIGATIONS.—

(1) IN GENERAL.—The acts enumerated in subsection (d) of section 2441 of title 18, United States Code, as added by subsection (b) of this section, and in subsection (c) of this section, constitute violations of common Article 3 of the Geneva Conventions prohibited by United States law.

(2) PROHIBITION ON GRAVE BREACHES.—The provisions of section 2441 of title 18, United States Code, as amended by this section, fully satisfy the obligation under Article 129 of the Third Geneva Convention for the United States to provide effective penal sanctions for grave breaches which are encompassed in common Article 3 in the context of an armed conflict not of an international character. No foreign or international source of law shall supply a basis for a rule of decision in the courts of the United States in interpreting the prohibitions enumerated in subsection (d) of such section 2441.

(3) INTERPRETATION BY THE PRESIDENT.—

(A) As provided by the Constitution and by this section, the President has the authority for the United States to interpret the meaning and application of the Geneva Conventions and to promulgate higher standards and administrative regulations for violations of treaty obligations which are not grave breaches of the Geneva Conventions.

(B) The President shall issue interpretations described by subparagraph (A) by Executive Order published in the Federal Register.

(C) Any Executive Order published under this paragraph shall be authoritative (except as to grave breaches of common Article 3) as a matter of United States law, in the same manner as other administrative regulations.

(D) Nothing in this section shall be construed to affect the constitutional functions and responsibilities of Congress and the judicial branch of the United States.

(4) DEFINITIONS.—In this subsection:

(A) GENEVA CONVENTIONS.—The term ''Geneva Conventions'' means—

(i) the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, done at Geneva August 12, 1949 (6 UST 3217);

(ii) the Convention for the Amelioration of the Condition of the Wounded, Sick, and Shipwrecked Members of the Armed Forces at Sea, done at Geneva August 12, 1949 (6 UST 3217);

(iii) the Convention Relative to the Treatment of Prisoners of War, done at Geneva August 12, 1949 (6 UST 3316); and

(iv) the Convention Relative to the Protection of Civilian Persons in Time of War, done at Geneva August 12, 1949 (6 UST 3516).

(B) THIRD GENEVA CONVENTION.—The term ''Third Geneva Convention'' means the international convention referred to in subparagraph (A)(iii).

(b) REVISION TO WAR CRIMES OFFENSE UNDER FEDERAL CRIMINAL CODE.—

(1) IN GENERAL.—Section 2441 of title 18, United States Code, is amended—

(A) in subsection (c), by striking paragraph (3) and inserting the following new paragraph (3):

''(3) which constitutes a grave breach of common Article 3 (as defined in subsection (d)) when committed in the context of and in association with an armed conflict not of an international character; or''; and

(B) by adding at the end the following new subsection:

''(d) COMMON ARTICLE 3 VIOLATIONS.—

''(1) PROHIBITED CONDUCT.—In subsection (c)(3), the term 'grave breach of common Article 3' means any conduct (such conduct constituting a grave breach of common Article 3 of the international conventions done at Geneva August 12, 1949), as follows:

''(A) TORTURE.—The act of a person who commits, or conspires or attempts to commit, an act specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control for the purpose of obtaining information or a confession, punishment, intimidation, coercion, or any reason based on discrimination of any kind.

''(B) CRUEL OR INHUMAN TREATMENT.—The act of a person who commits, or conspires or attempts to commit, an act intended to inflict severe or serious physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions), including serious physical abuse, upon another within his custody or control.

''(C) PERFORMING BIOLOGICAL EXPERIMENTS.—The act of a person who subjects, or conspires or attempts to subject, one or more persons within his custody or physical control to biological experiments without a legitimate medical or dental purpose and in so doing endangers the body or health of such person or persons.

''(D) MURDER.—The act of a person who intentionally kills, or conspires or attempts to kill, or kills whether intentionally or unintentionally in the course of committing any other offense under this subsection, one or more persons taking no active part in the hostilities, including those placed out of combat by sickness, wounds, detention, or any other cause.

''(E) MUTILATION OR MAIMING.—The act of a person who intentionally injures, or conspires or attempts to injure, or injures whether intentionally or unintentionally in the course of committing any other offense under this subsection, one or more persons taking no active part in the hostilities, including those placed out of combat by sickness, wounds, detention, or any other cause, by disfiguring the person or persons by any mutilation thereof or by permanently disabling any member, limb, or organ of his body, without any legitimate medical or dental purpose.

''(F) INTENTIONALLY CAUSING SERIOUS BODILY INJURY.—The act of a person who intentionally causes, or conspires or attempts to cause, serious bodily injury to one or more persons, including lawful combatants, in violation of the law of war.

''(G) RAPE.—The act of a person who forcibly or with coercion or threat of force wrongfully invades, or conspires or attempts to invade, the body of a person by penetrating, however slightly, the anal or genital opening of the victim with any part of the body of the accused, or with any foreign object.

''(H) SEXUAL ASSAULT OR ABUSE.—The act of a person who forcibly or with coercion or threat of force engages, or conspires or attempts to engage, in sexual contact with one or more persons, or causes, or conspires or attempts to cause, one or more persons to engage in sexual contact.

''(I) TAKING HOSTAGES.—The act of a person who, having knowingly seized or detained one or more persons, threatens to kill, injure, or continue to detain such person or persons with the intent of compelling any nation, person other than the hostage, or group of persons to act or refrain from acting as an explicit or implicit condition for the safety or release of such person or persons.

''(2) DEFINITIONS.—In the case of an offense under subsection (a) by reason of subsection (c)(3)—

''(A) the term 'severe mental pain or suffering' shall be applied for purposes of paragraphs (1)(A) and (1)(B) in accordance with the meaning given that term in section 2340(2) of this title;

''(B) the term 'serious bodily injury' shall be applied for purposes of paragraph (1)(F) in accordance with the meaning given that term in section 113(b)(2) of this title;

''(C) the term 'sexual contact' shall be applied for purposes of paragraph (1)(G) in accordance with the meaning given that term in section 2246(3) of this title;

''(D) the term 'serious physical pain or suffering' shall be applied for purposes of paragraph (1)(B) as meaning bodily injury that involves—

''(i) a substantial risk of death;

''(ii) extreme physical pain;

''(iii) a burn or physical disfigurement of a serious nature (other than cuts, abrasions, or bruises); or

''(iv) significant loss or impairment of the function of a bodily member, organ, or mental faculty; and

''(E) the term 'serious mental pain or suffering' shall be applied for purposes of paragraph (1)(B) in accordance with the meaning given the term 'severe mental pain or suffering' (as defined in section 2340(2) of this title), except that—

''(i) the term 'serious' shall replace the term 'severe' where it appears; and

''(ii) as to conduct occurring after the date of the enactment of the Military Commissions Act of 2006, the term 'serious and nontransitory mental harm (which need not be prolonged)' shall replace the term 'prolonged mental harm' where it appears.

''(3) INAPPLICABILITY OF CERTAIN PROVISIONS WITH RESPECT TO COLLATERAL DAMAGE OR INCIDENT OF LAWFUL ATTACK.—The intent specified for the conduct stated in subparagraphs (D), (E), and (F) or paragraph (1) precludes the applicability of those subparagraphs to an offense under subsection (a) by reasons of subsection (c)(3) with respect to—

''(A) collateral damage; or

''(B) death, damage, or injury incident to a lawful attack.

''(4) INAPPLICABILITY OF TAKING HOSTAGES TO PRISONER EXCHANGE.—Paragraph (1)(I) does not apply to an offense under subsection (a) by reason of subsection (c)(3) in the case of a prisoner exchange during wartime.

''(5) DEFINITION OF GRAVE BREACHES.—The definitions in this subsection are intended only to define the grave breaches of common article 3 and not the full scope of United States obligations under that Article.''.

(2) RETROACTIVE APPLICABILITY.—The amendments made by this subsection, except as specified in subsection (d)(2)(E) of section 2441 of title 18, United States Code, shall take effect as of November 26, 1997, as if enacted immediately after the amendments made by section 583 of Public Law 105–118 (as amended by section 4002(e)(7) of Public Law 107–273).

(c) ADDITIONAL PROHIBITION ON CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT.—

(1) IN GENERAL.—No individual in the custody or under the physical control of the United States Government, regardless of nationality or physical location, shall be subject to cruel, inhuman, or degrading treatment or punishment.

(2) CRUEL, INHUMAN, OR DEGRADING TREATMENT OR PUNISHMENT DEFINED.—In this subsection, the term ''cruel, inhuman, or degrading treatment or punishment'' means cruel, unusual, and inhumane treatment or punishment prohibited by the Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States, as defined in the United States Reservations, Declarations and Understandings to the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment done at New York, December 10, 1984.

(3) COMPLIANCE.—The President shall take action to ensure compliance with this subsection, including through the establishment of administrative rules and procedures.

SEC. 7. HABEAS CORPUS MATTERS.

(a) IN GENERAL.—Section 2241 of title 28, United States Code, is amended by striking both the subsection (e) added by section 1005(e)(1) of Public Law 109–148 (119 Stat. 2742) and the subsection (e) added by added by section 1405(e)(1) of Public Law 109–163 (119 Stat. 3477) and inserting the following new subsection (e):

''(e)(1) No court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the United States who has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.

''(2) Except as provided in paragraphs (2) and (3) of section 1005(e) of the Detainee

Treatment Act of 2005 (10 U.S.C. 801 note), no court, justice, or judge shall have jurisdiction to hear or consider any other action against the United States or its agents relating to any aspect of the detention, transfer, treatment, trial, or conditions of confinement of an alien who is or was detained by the United States and has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on the date of the enactment of this Act, and shall apply to all cases, without exception, pending on or after the date of the enactment of this Act which relate to any aspect of the detention, transfer, treatment, trial, or conditions of detention of an alien detained by the United States since September 11, 2001.

SEC. 8. REVISIONS TO DETAINEE TREATMENT ACT OF 2005 RELATING TO PROTECTION OF CERTAIN UNITED STATES GOVERNMENT PERSONNEL.

(a) COUNSEL AND INVESTIGATIONS.—Section 1004(b) of the Detainee Treatment Act of 2005 (42 U.S.C. 2000dd–1(b)) is amended—

(1) by striking ''may provide'' and inserting ''shall provide'';

(2) by inserting ''or investigation'' after ''criminal prosecution''; and

(3) by inserting ''whether before United States courts or agencies, foreign courts or agencies, or international courts or agencies,'' after ''described in that subsection''.

(b) PROTECTION OF PERSONNEL.—Section 1004 of the Detainee Treatment Act of 2005 (42 U.S.C. 2000dd–1) shall apply with respect to any criminal prosecution that—

(1) relates to the detention and interrogation of aliens described in such section;

(2) is grounded in section 2441(c)(3) of title 18, United States Code; and

(3) relates to actions occurring between September 11, 2001, and December 30, 2005.

SEC. 9. REVIEW OF JUDGMENTS OF MILITARY COMMISSIONS.

Section 1005(e)(3) of the Detainee Treatment Act of 2005 (title X of Public Law 109–148; 119 Stat. 2740; 10 U.S.C. 801 note) is amended—

(1) in subparagraph (A), by striking ''pursuant to Military Commission Order No. 1. dated August 31, 2005 (or any successor military order)'' and inserting ''by a military commission under chapter 47A of title 10, United States Code'';

(2) by striking subparagraph (B) and inserting the following new subparagraph (B):

''(B) GRANT OF REVIEW.—Review under this paragraph shall be as of right.'';

(3) in subparagraph (C)—

(A) in clause (i)—

(i) by striking ''pursuant to the military order'' and inserting ''by a military commission''; and

(ii) by striking ''at Guantanamo Bay, Cuba''; and

(B) in clause (ii), by striking ''pursuant to such military order'' and inserting ''by the military commission''; and

(4) in subparagraph (D)(i), by striking ''specified in the military order'' and inserting ''specified for a military commission''.

SEC. 10. DETENTION COVERED BY REVIEW OF DECISIONS OF COMBATANT STATUS REVIEW TRIBUNALS OF PROPRIETY OF DETENTION.

Section 1005(e)(2)(B)(i) of the Detainee Treatment Act of 2005 (title X of Public Law 109–148; 119 Stat. 2742; 10 U.S.C. 801 note) is amended by striking ''the Department of Defense at Guantanamo Bay, Cuba'' and inserting ''the United States''.

The SPEAKER pro tempore. Debate shall not exceed 2 hours, with 80 minutes equally divided and controlled by the chairman and the ranking minority member of the Committee on Armed Services and 40 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary.

The gentleman from California (Mr. HUNTER) and the gentleman from Missouri (Mr. SKELTON) each will control 40 minutes, and the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from Michigan (Mr. CONYERS) each will control 20 minutes.

The Chair recognizes the gentleman from California.

GENERAL LEAVE

Mr. HUNTER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 6166.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. HUNTER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 6166, the Military Commissions Act of 2006. I can't think of a better way to honor the fifth anniversary of September 11 than by establishing a system to prosecute the terrorists who on that day murdered thousands of innocent civilians and who continue to seek to kill Americans, both on and off the battlefield.

Our most important consideration in writing this legislation is to protect American troops and American citizens from harm. The war against terror has produced a new type of battlefield and a new type of enemy. How is it different? We are fighting a ruthless enemy who doesn't wear a uniform, an enemy who kills civilians, women and children, and then boasts about it; a barbaric enemy who beheads innocent civilians by sawing their heads off; an uncivilized enemy who does not acknowledge or respect the laws of war.

Justice Thomas put it best in the Hamdan decision. He said, ''We are not engaged in a traditional battle with a nation state, but with a worldwide hydro-headed enemy who lurks in the shadows conspiring to reproduce the atrocities of September 11, 2001, and who has boasted of sending suicide bombers into civilian gatherings, has proudly distributed videotapes of the beheadings of civilian workers, and has tortured and dismembered captured American soldiers.

So how is the battlefield new? First, it will be a long war. We don't know if this enemy will be defeated this decade, the next decade or even longer than that. Second, in this new war, where intelligence is more vital than ever, we want to interrogate the enemy; not to degrade them, but to save the lives of American troops, American civilians and our allies. But it is not practical on the battlefield to read the enemy their Miranda warnings.

Finally, this is an ongoing conflict, and sharing sensitive intelligence sources, methods and other classified information with terrorist detainees could be highly dangerous to national security, and we are not prepared to take that risk.

So what have we done to develop a military commission process that will allow for the effective prosecution of enemy combatants during this ongoing conflict? Without this action, the United States has no effective means to try and punish the perpetrators of September 11, the attack on the USS *Cole* and the embassy bombings. We provide basic fairness in our prosecutions, but we also preserve the ability of our warfighters to operate effectively on the battlefield.

I think a fair process has two guiding principles, Mr. Speaker. First, the government must be able to present its case fully and without compromising its intelligence sources or compromising military necessity. Second, the prosecutorial process must be done fairly, swiftly, and conclusively.

Who are we dealing with in military commissions? I have shown the picture of Khalid Sheikh Mohammed, who is alleged to have designed the attack against the United States that was carried out on 9/11. We are dealing with the enemy in war, not defendants in our domestic criminal justice system. Some of them have returned to the battlefield after we let them out of Guantanamo.

Our primary purpose is to keep them off the battlefield. In doing so, we treat them humanely, and, if we choose to try them as war criminals, we will give them due process rights that the world will respect. But we have to remember that they are the enemy in an ongoing war.

In time of war, it is not practical to apply to rules of evidence the same rules of evidence that we do in civilian trials or court martials for our troops. Commanders and witnesses can't be called from the front line to testify in a military commission.

We need to accommodate rules of evidence, chain of custody and authentication to fit what we call the exigencies of the battlefield. It is clear, Mr. Speaker, that we don't have crime scenes that can be reproduced, that can be taped off, that can be attended to by dozens of people looking for forensic evidence. We have in this war against terror a battlefield situation.

□ 1330

If hearsay is reliable, we should use it. And I might add that hearsay is utilized and has been utilized in tribunals like the Rwanda tribunals and the Kosovo tribunals. If sworn affidavits are reliable, we should use them. And, Mr. Speaker, we have not expanded the use of hearsay beyond what is being used in those tribunals, Rwanda and Yugoslavia.

The Supreme Court has tasked us with an adjustment, but in doing so

let's not forget our purpose is to defend the Nation against the enemy. We won't lower our standards; we will always treat detainees humanely, but we can't be naive either.

This war started in 1996 with the al Qaeda declaration of jihad against our Nation. The Geneva Conventions were written in 1949, and the UCMJ was adopted in 1951. In that sense, what we are required to do after the Hamdan decision is broader than war crimes trials. It is the start of a new legal analysis for the long war. It is time for us to think about war crime trials and a process that provides due process and protects national security in this new war.

So what do we do with these new military commissions? We uphold basic human rights and state what our compliance with this standard means for the treatment of detainees. We do this in a way that is fair and in a way that the world will acknowledge is fair.

First, we provide accused war criminals at least 26 rights if they are tried by a commission for a war crime. While I will not read all of them, here are some of the essential rights we provide:

The right to counsel, provided by government at trial and throughout appellate proceedings. An impartial judge. A presumption of innocence. A standard of proof beyond a reasonable doubt. The right to be informed of the charges against him as soon as practicable. The right to service of charges sufficiently in advance of trial to prepare a defense.

And, Mr. Speaker, I am going to insert the balance of those 26 basic and fundamental rights in the RECORD, so I won't read them all at this point.

The right to reasonable continuances;

Right to peremptory challenge against members of the commission and challenges for cause against members of the commission and the military judge;

Witness must testify under oath; judges, counsel and members of military commission must take oath;

Right to enter a plea of not guilty;

The right to obtain witnesses and other evidence;

The right to exculpatory evidence as soon as practicable;

The right to be present at court with the exception of certain classified evidence involving national security, preservation of safety or preventing disruption of proceedings;

The right to a public trial except for national security issues or physical safety issues;

The right to have any findings or sentences announced as soon as determined;

Right against compulsory self-incrimination;

Right against double jeopardy;

The defense of lack of mental responsibility;

Voting by members of the military commission by secret written ballot;

Prohibitions against unlawful command influence toward members of the commission, counsel or military judges;

2/3 vote of members required for conviction; 3/4 vote required for sentences of life or over 10 years; unanimous verdict required for death penalty;

Verbatim authenticated record of trial;

Cruel or unusual punishments prohibited;

Treatment and discipline during confinement the same as afford to prisoners in U.S. domestic courts;

Right to review of full factual record by convening authority; and

Right to at least two appeals including to a Federal Article III appellate court.

We provide all these rights, and we give them an independent judge, and the right to at least two appeals, including the U.S. Court of Appeals for the District of Columbia and access to the Supreme Court. Nobody can say this is not a fair system.

I know some of my colleagues are concerned about the issue of reciprocity. Look at this list of rights. And we are going to put it up here, Mr. Speaker, so that all the Members can see this. And also keep in mind that these are the rights for terrorists. These are the rights for the people who struck us on 9/11 and killed thousands of Americans. If we are talking about true reciprocity, then we are only concerned about how the enemy will treat American terrorists. These are not our rules for POWs; these are how we treat terrorists. We treat the legitimate enemy differently, and expect them to treat our troops the same.

How do we try the enemy for war crimes? In this act, Congress authorizes the establishment of military commissions for alien unlawful enemy combatants, which is the legal term we use to define international terrorists and those who aid and support them, in a new separate chapter of title 10 of the U.S. Code, chapter 47A. While this new chapter is based upon the Uniform Code of Military Justice, it creates, Mr. Speaker, an entirely new structure for these trials.

In this bill we provide standards for the admission of evidence, including hearsay evidence and other statements, that are adapted to military exigencies and provide the military judge the necessary discretion to determine if the evidence is reliable and probative. And he must find that it is reliable and probative before he allows it to be admitted.

I want to talk a little bit about how we handle classified evidence. We had three hearings on this bill in addition to briefings and meetings with experts. I asked every witness the same question: If we have an informant, either a CIA informant or an undercover witness of some sort, are we going to tell Kalid Sheikh Mohammed who the informant is? The legislation does not allow KSM to learn the identity of the informant.

After several twists and turns in the road, after meeting with the Senate and the White House in marathon sessions over the weekend, we have crafted a solution that does not allow the alleged terrorists to learn the identity of the informant, yet provides a fair trial. And, Mr. Speaker, that is critically important to all of us in this Chamber, because that American agent or informant may have information that saves thousands of lives. He may be of enormous value added to the security of this country. We can't divulge his identity, and we can't divulge it to the alleged terrorist, and doing so would allow that information to go back quickly, as it has on two occasions: one coming out of the first bombing of the World Trade Center where we now have established that Osama bin Laden did come into possession of classified evidence that was moved up through those court proceedings, and once in Guantanamo. So it is very, very important that we protect classified evidence and that we protect the identity of our agents.

We address this in section 949d, subsection (f) of section 3. Classified evidence is protected and is privileged from disclosure to the jury and the accused if disclosure would be detrimental to national security. The accused is permitted to be present at all phases of the trial, and no evidence is presented to the jury that is not also provided to the accused. Section 949d(f) makes a clear statement that sources, methods, or activities will be protected and privileged and not shown to the accused.

However, and this is how you move the essence of an undisclosed agent's testimony to the jury without disclosing the identity of the agent, the substantive findings of the sources, methods, or activities will be admissible in an unclassified form. This allows the prosecution to present its best case while protecting classified information. In order to do this, the military judge questions the informant outside the presence of the jury and the defendant. In order to give the jury and the defendant a redacted version of the informant's statement, the judge must find, one, that the sources, methods, or activities by which the U.S. acquired the evidence are classified; and, two, that the evidence is reliable.

Once the judge stamps the informant as reliable, the informant's redacted statement is given to both the jury and the accused. It removes the confrontation issue. And this, again, to my friends who said we want to follow the UCMJ and we want to give these people all the rights that we give our uniformed servicemen, our analysis is that we would not be able to keep from disclosure the identity of our special agents if we followed the UCMJ. That is designed to protect American uniformed servicemen, and it is not something that we should apply in the case of alleged terrorists.

I think that these rules protect classified evidence and yet preserve a fair trial.

One other point I want to make for the record. As I mentioned earlier, we have modified the rules of evidence to adapt to the battlefield. One of the principles used by the judiciary in criminal prosecutions of our citizens is called the fruit of the poisonous tree

doctrine. This rule provides that evidence derived from information acquired by police officials or the government through unlawful means is not admissible in a criminal prosecution.

I want to make it clear that it is our intent with the legislation not to have this doctrine apply to evidence in military commissions. While evidence obtained improperly will not be used directly against the accused, we will not limit the use of any evidence derived from such evidence.

The deterrent effect of the exclusionary rule is not something that our soldiers consider when they are fighting a war. The theory of the exclusionary rule is that if the constable blunders, the accused will not suffer. However, we are not going to say that if the soldier blunders, we are not going to punish a terrorist. Some rights are reserved for our citizens; some rights are reserved for civilized people.

Mr. Speaker, this is a complicated piece of legislation. In addition to establishing an entire legal process from start to finish, we address the application of common article 3 of the Geneva Conventions to our current laws.

Section 5 clarifies that the Geneva Conventions are not an enforceable source of rights in any habeas corpus or other civil action or proceeding by an individual in U.S. courts. Mr. Speaker, this protects American troops.

Section 6 of the bill amends 18 U.S.C. section 2441, the War Crimes Act, to criminalize grave breaches of common article 3 of the Geneva Conventions. As amended, the War Crimes Act will fully satisfy our treaty obligations under common article 3. This amendment is necessary because section C(3) of the War Crimes Act defines a war crime as any conduct which constitutes a violation of common article 3. Common article 3 prohibits some actions that are universally condemned, such as murder and torture, but it also prohibits outrages upon personal dignity and what is called humiliating and degrading treatment, phrases which are vague and do not provide adequate guidance to our personnel.

Since violation of common article 3 is a felony under the War Crimes Act, it is necessary to amend it to provide clarity and certainty to the interpretation of this statute. The surest way to achieve that clarity and certainty is to define the list of specific offenses that constitute war crimes punishable as grave violations of common article 3.

And, Mr. Speaker, this is very important. This protects our troops, it gives them certainty, it gives them clarity. You don't want to have our troops so paralyzed by what they see as prosecutions arising out of common article 3 that you will have a situation where a female officer in the U.S. military will not interrogate a Muslim male on the basis that she is afraid that that action may be defined or projected as being a humiliation of that particular prisoner being interrogated and therefore subjecting that female American officer to a war crimes accusation.

So what we have done is we have taken the offenses that are considered to be grave offenses under article 3, and then I have enumerated several of those, and we define those as the offenses which will be applicable upon which prosecutions can be brought, and then we give to the President on what I would call infractions of Geneva article 3 or lesser violations of Geneva article 3, we give him the right to put together regulations that account for and treat actions that are defined under those minor offenses.

Section 6 of the bill also provides that any detainee under the custody or physical control of the United States will not be subject to cruel, inhumane, or degrading punishment provided by the fifth, eighth, and fourteenth amendments to the Constitution as defined by the U.S. Reservations to the U.N. Convention Against Torture. This defines our obligations under common article 3 by reference to the U.S. constitutional standard adopted by the Detainee Treatment Act that we passed in 2005. And, Mr. Speaker, all parties, both Houses, decided that it was appropriate that we define this type of treatment, degrading treatment, especially under the reservations to the convention that is mentioned, the U.N. Convention Against Torture. We decided that that was good enough for putting together the Detainee Treatment Act; it should be good enough for this particular body of law.

Section 7 of the bill addresses the question of judicial review of claims by detainees by amending 28 U.S.C. section 2241 to clarify the intent of the Detainee Treatment Act of 2005 to limit the right of detainees to challenge their detentions. The practical effect of this amendment will be to eliminate the hundreds of detainee lawsuits that are pending in courts throughout the country and to consolidate all detainee treatment cases in the D.C. Circuit Court.

However, I want to stress that under this provision detainees will retain their opportunity to file legitimate charges to their status and to challenge convictions by military commissions. Every detainee under confinement in Guantanamo Bay will have their detention reviewed by the U.S. Court of Appeals for the District of Columbia.

□ 1345

So what we are doing here is channeling the suits to a particular court which has great expertise in this area, rather than let them be put in rifle-shot fashion or form-shot fashion to other courts throughout the United States.

Mr. SENSENBRENNER and my other colleagues are going to speak on the rest of the bill. But, before I finish, I want to make one point very clear. This legislation does not condone or authorize torture in any way. In fact, we make it a war crime punishable by death for one of our interrogators to torture someone to death.

Let me emphasize that again. In section 6 of this bill, we amend 18 U.S.C. 2441, the War Crimes Act. In this amendment, we explicitly provide that torture inflicted upon a person in custody for the purpose of obtaining information is a war crime for which we may prosecute one of our own citizens. While most of this legislation deals with how we handle the enemy, I want to make it crystal clear that nothing in what we are doing condones or allows torture in any way.

Mr. Speaker, unfortunately, I heard at least one Member on the Democrat side say that this gives the President the right to define what torture is. That is not accurate. Torture is forbidden, and there are specific criminal penalties for torture.

In summary, I think this legislation is the best way to prosecute enemy terrorists and to protect U.S. Government personnel and service members who are fighting them.

Let me make one final statement with respect to the right to Miranda warnings and all of the evidentiary rulings that accompany an application utilizing the UCMJ, the Uniform Code of Military Justice, in battlefield situations if we had done that, which we did not.

In the hearings we had, we had at least one experienced officer in the Judge Advocate Corps state that it was his opinion, having tried hundreds of cases, that if you applied the UCMJ, as a number of Members on the Democrat side said they would like to do, to constitute the body of law under which we are prosecuting terrorists, in this officer's opinion once a corporal had captured a terrorist on the battlefield, maybe seconds after that terrorist had shot at him, and threw that terrorist over the hood of a Humvee, if you used the UCMJ, he would at that point have to give him the Miranda rights and then call up a lawyer and assign that lawyer to that alleged terrorist, and then all of the statements and all of the evidentiary rulings that could flow from that activity would then trigger.

Mr. Speaker, we can't have a battlefield where platoon leaders and company commanders are bringing up fire teams and with those fire teams they are bringing up teams of lawyers. That is why we needed a new type of structure for this new type of battlefield.

Mr. Speaker, I think we have responded to the mandate of the Supreme Court that Congress involve itself in producing this new structure to prosecute terrorists. I think we have done a good job. We have worked hard with the Senate and White House. We have made dozens and dozens and dozens of agreed provisions in here that have been carefully looked over by the Senate, the White House, and the House of Representatives. I think we have a package that will allow us to leave this

body in the next several days having put into place a system under which we can try individuals who are now waiting at Guantanamo, people who are alleged to have designed the attack against the United States on 9/11 and which we can now begin the prosecution of those individuals.

I want to thank everybody who has participated in this long and arduous procedure. We have had lots of hearings in the Senate and in the House. My good colleague, Mr. SKELTON, was involved himself in these hearings and on the original markup that we did on the bill.

We have differences of opinions. I think this is a time when we should come together and pass what is an excellent body of law that will be a very important part of fighting this new war against this new type of enemy.

Mr. Speaker, I reserve the balance of my time.

Mr. SKELTON. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, we need to be tough on the terrorists, but we also need to be tough with certainty. I oppose this legislation because it lacks the certainty that we require.

As a former prosecuting attorney from yesteryear, Mr. Speaker, I remember the specter that hangs over every prosecutor's head after successfully prosecuting a criminal, and that specter is that the Supreme Court will reverse that hard-won conviction.

I am terribly concerned that this is not tough enough because it does not bring about the certainty of a conviction being upheld and standing the scrutiny of our Supreme Court.

This is a constitutional issue. The debate today will undoubtedly go down in the annals of our country as being one that stands out as a study in constitutional law and duty thereunder. Our duty as Members of Congress is to uphold the Constitution. That is what I intend to do in my speech and in my vote.

But also it is our duty to pass legislation that is constitutional. I have serious questions as to whether this is constitutional or not.

I received a letter from the Chief Counsel of the tribunals that exist, Colonel Dwight Sullivan, who said, ''If the new military commission system is constitutionally permissible, allow it to proceed with the judiciary's imprimatur. If, as I believe, it is constitutionally deficient, then allow the judiciary to quickly identify its faults so they can be corrected.''

I offered an amendment to the Rules Committee that would provide for expedited review by the court system, and it was turned down.

What is so bad is that a case goes cold, witnesses disappear, witnesses die. It would be an absolute injustice for a despicable terrorist, once convicted, to have that conviction overturned, and you can't try it again. Some of these people are absolutely the worst of the worst. That is why we need certainty in the law, and that is what we do not have here.

There are numerous constitutional challenges regarding this legislation. I will mention them:

The provisions that strip the Federal courts of jurisdiction over habeas corpus.

Second, article I of the Constitution prohibits ex post facto laws. That is what this creates.

Third, it is questionable as to whether under article III of the Constitution the Supreme Court would uphold a system that purports to make the President the final arbiter of the Geneva Convention.

Fourth, the provisions regarding coerced testimony may be challenged under three amendments to our Constitution.

Fifth, the right to confront witnesses and evidence. It also, among other things, has legislation containing the broadest of hearsay rules.

Sixth, the violation of the exceptions clause under article III.

Seventh, the challenges on equal protection and other constitutional grounds.

We want certainty, Mr. Speaker. We want these people, once tried, to be convicted and that conviction upheld. If we pass a law full well knowing that there are provisions in here that would allow them a get-out-of-jail-free card or to have a death sentence reversed, we are doing wrong. We are doing wrong according to our duty, and we are doing wrong in representing the people of our country.

We need certainty as well as toughness. Without certainty, we will not be tough on these terrorists.

Mr. Speaker, I reserve the balance of my time.

Mr. HUNTER. Mr. Speaker, I yield 3 minutes to the gentleman from New Jersey (Mr. SAXTON), the chairman of the Subcommittee on Terrorism.

Mr. SAXTON. Mr. Speaker, I rise in strong support of H.R. 6166.

Ladies and gentleman, this is not an ordinary bill. This is an urgently needed measure to fill a gaping hole in our legal system, both in our ability to bring criminals of 9/11 to justice, the bombings of the USS *Cole* and the American embassies in Kenya and Tanzania to justice, and to protect our American troops and agents from frivolous prosecutions and lawsuits. It is no exaggeration to say that this is the most important measure to come before this body in this Congress.

Without this bill, the mastermind of 9/11, Khalid Sheik Mohammed, who deliberated and cold-bloodedly plotted the death of thousands of Americans, would go unpunished for his crimes upon humanity.

Yes, we are a nation of laws. The Supreme Court has called upon the Congress to act, and that is what we will do.

We have produced an extraordinarily fair criminal process here to adjudicate the fate of these terrorists. Those who would find the court procedures laid out in this bill wanting will never be satisfied until we are reading Miranda rights on the battlefield. We have carefully narrowed and crafted the provisions of this bill to enable the United States to prosecute the perpetrators of the 1998 bombings of the American embassies in Kenya and Tanzania, the 2000 attack on the USS *Cole*, and other crimes that have been committed.

Yes, these were suicide attacks and the men who delivered the explosives were killed, along with innocent victims, but the planner, logisticians, and financiers of those operations remain at large.

Importantly, this bill allows, as all Americans believe it should, the criminal prosecutions of those who purposefully and materially supported these criminal activities. And, of course, the measure covers those responsible for 9/11 as well.

Mr. Speaker, I can think of no reason that this measure should not pass unanimously. It outlaws torture.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair notes a disturbance in the gallery in violation of the Rules of the House and directs the Sergeant at Arms to restore order.

The gentleman may proceed.

Mr. SAXTON. Mr. Speaker, I can think of no reason that this measure should not pass unanimously. It outlaws torture, mandates decent treatment for unlawful enemy combatants who are in our custody, protects Americans from frivolous lawsuits and prosecutions, and, most critically, provides a fair, balanced and civilized process by which the international war criminals may be held accountable for their action.

The world has waited long enough to bring these men to justice. Vote ''yes'' on this measure.

Mr. SKELTON. Mr. Speaker, I yield 2 minutes to the gentleman from Texas (Mr. ORTIZ).

(Mr. ORTIZ asked and was given permission to revise and extend his remarks.)

Mr. ORTIZ. Mr. Speaker, each and every Member of this House is equally concerned with bringing terrorists to justice and punishing them for attacking the United States because they have committed horrible crimes.

But I have a lot of questions to ask. I want to be sure that I do the right thing. Why are we rushing into this? I know we have to comply with the law, but we should not be in a hurry. I think we need to do what is right.

□ 1400

You know, I have some questions. When the Geneva Conventions convened back in 1949, there were at least 200 countries who agreed in what came out of this convention. Are we prepared for other nations' leaders, such as Iran, Syria, and others, to selectively interpret the Conventions' article 3 in a way that we are comfortable with?

I am pretty sure that when they met in 1949, there were agreements and disagreements, but we came out with something that everybody accepted. Now there are going to be some changes into that. Have we in any way contacted those leaders of those countries to see what they think about the changes that are being formulated today?

I think that we are beginning to open up a can of worms. So we are going to have to be very careful of what we do. The Navy Judge Advocate General, the top lawyer for the Navy, reminded us recently that Geneva exists to protect American soldiers. Our protections are only as strong as the protections of the Geneva Conventions.

Mr. Speaker, each and every member of this House is equally concerned with bringing terrorists to justice and punishing them for attacking the United States.

Everything about this bill today begs questions.

Do we know what we are doing in putting our feet on an unsure path, one which will certainly change the face of our international responsibilities and our international obligations?

Why are we rushing this? We should not be in such a hurry to overhaul our international obligations.

Nearly 200 nations around the world are signatories to the Geneva Conventions. Are we prepared for other nations' leaders—such as Iran, Syria and others—to selectively interpret the Convention's Article 3 in a way that we are comfortable with?

What can of worms are we opening today?

The Navy Judge Advocate General, the top lawyer for the Navy, reminded us recently that Geneva exists to protect American soldiers. Our protections are only as strong as the protections Geneva offers.

Why are we taking away the Supreme Court's authority—in a historic grab of power—to consult international law in interpreting conduct associated with the War Crimes Act?

Are we taking away power from our other Federal courts?

Do we remember one of the more salient points raised by the 9–11 Commission that the United States was negligent in staying involved in matters around the world?

The 9–11 Commission encouraged the U.S. to get more involved with other nations, to find security in a global environment. Are we doing that today?

My grandson Oscar is almost 4 years old. He may be a soldier someday. While his grandfather is in Congress, I will raise my voice to keep our soldiers safe.

When Congress gives away power to the President, it is a permanent move. The question each of us must ask is: how wise will this policy seem 10 years from now? And when the Congress gives power to the President, we must understand that the President today will not be in office years down the road.

To my friends on the other side of the aisle: do you know the test to apply for this question? It is this: Think of the person you disagree with completely, imagine they are the President, and ask yourself: Do I really want that person to have this authority?

COMPARISON OF ALTERNATIVES RELATED TO MILITARY COMMISSIONS

Compromise bill (H.R. 6166)	McCain-Warner (S. 3901)
GENEVA CONVENTIONS, TREATY OBLIGATIONS AND INTERNATIONAL LAW	
Authorizes the President to interpret of meaning and application of the Geneva Conventions.	Defines grave breaches to Common Article 3 of the Geneva Conventions to include cruel, unusual, inhumane treatment or punishment with reference to the 5th, 8th and 14th Amendments.
Revises War Crimes Act to provide limited immunity for government officials from prosecution for past acts that degraded and humiliated detainees.	Does not retroactively apply the revisions to the War Crimes Act.
Asserts that the revised War Crimes Act fully satisfies the U.S. obligation under the Geneva Convention to provide penal sanctions for grave breaches of Common Article 3.	Does not create a three-tier system of enforcement, with Presidential discretion to define and enforce any offenses below grave breaches of Common Article 3.
Adds a ban on U.S. courts using any international law in interpreting conduct prohibited in the War Crimes Act.	
Makes the War Crimes Act changes retroactive to the amendments to the War Crimes Act in 1997.	
For lesser offenses below a grave breach, gives the President explicit authority to interpret the meaning and application of the Geneva Conventions Common Article 3.	
Requires that such interpretations be published, rather than described in secret to a restricted number of lawmakers.	
Affirms that Congress and the judiciary can play their customary roles in reviewing the interpretations.	
Prohibits cruel, inhuman, or degrading treatment or punishment and relies on the President to ensure compliance.	
DEFINITION OF ENEMY COMBATANT	
Expands the definition of an "unlawful enemy combatant" to include an individual who has "purposefully and materially" supported hostilities against the U.S. or its co-belligerents or a person who is or was determined to be an unlawful enemy combatant by a Combatant Status Review Tribunal.	Defines "unlawful enemy combatant" as an individual engaged in hostilities against the United States who is not a lawful enemy combatant.
DETAINEE HABEAS CORPUS CLAIMS	
Identical to S. 3901	Extinguishes pending Habeas Corpus claims.
CLASSIFIED INFORMATION AND ACCESS OF THE ACCUSED TO EVIDENCE.	
Generally the same as S. 3901 with some additional clarifications to ensure the accused will not see classified information.	The accused may not be denied access to evidence against him that is presented to the panel or jury. The accused will not see classified information. Essentially follows the existing military rules of evidence requiring declassification, redaction and use of substitutes. The prosecution may decide to delete charges, withdraw the case, or defer prosecution.
EVIDENCE OBTAINED THROUGH COERCION/SELF-INCRIMINATION	
Allows statements, *obtained before passage of the DTA,* through cruel, inhuman and degrading treatment and lesser forms if coercion of the military judge finds it reliable and probative and in the interest of justice.	Prohibits use of statements obtained by cruel, inhuman, and degrading treatment not amounting to torture.
Allows statements, *obtained after passage of the DTA,* through coercion (but not through cruel, unusual, or inhumane treatment or punishment) if the judge finds it reliable and probative and in the interest of justice.	Statements obtained by lesser forms of coercion may be allowed if the military judge finds it reliable and probative, and in the interest of justice.
HEARSAY EVIDENCE	
Hearsay is more easily admissible.	Hearsay is admissible if the military judge finds the evidence more probative than other evidence the proponent can reasonably obtain.
Hearsay normally inadmissible can be used unless the party it is used against demonstrates it is unreliable or lacks probative value (burden of proof is on the accused).	
Emphasizes the importance of preventing disclosure of classified hearsay (no substantive addition).	
APPEALS	
Establishes a Court of Military Commission Review, with appeals to the D.C. Circuit, and by certiorari to the Supreme Court.	Appeals would be to the Court of Appeals for the Armed Forces, and by certiorari to the Supreme Court.

Mr. HUNTER. Mr. Speaker, I would like to yield 3 minutes now to the gentleman whose subcommittee oversees the policies for our 2.5 million folks in uniform, Mr. MCHUGH of New York.

(Mr. MCHUGH asked and was given permission to revise and extend his remarks.)

Mr. MCHUGH. Mr. Speaker, I thank the gentleman for yielding.

Let me just make a few comments based off that statement. This is a great country when we can have, as we had moments ago, an individual come into the people's House and express, perhaps out of order but very passionately, their concerns about how we are being unfair.

Let me be very clear. As someone who has for 14 years visited our troops in virtually every combat theater in which they have been located, if our troops were to be taken prisoner, they would be well served by the enemies of this Nation, such as Sudan, such as North Korea, and, as was mentioned, Iran and others, to be treated under the provisions of this act.

We are extending to these terrorists, and make no mistake about it that they are terrorists, unlawful combatants, the rights and protections that all of us as American citizens enjoy under the fifth, the eighth, and the fourteenth amendment.

I have heard my good colleagues, and they are good Americans, express concerns about somehow changing our obligations under the Geneva Conventions under common article 3. Make no mistake about this as well. The language that we are incorporating into our basic domestic criminal law uses the language of the commentaries on

common article 3 and the Geneva Conventions. We simply harmonize that common article 3 with our United States laws, requiring that only grave breaches of that common article, as provided in the Geneva Conventions' commentaries, are subject to criminal prosecution.

International law has traditionally provided, time and time again, that it is the signatory to an international convention that is responsible for making it clear what the violations of law may be, and that is what we are doing here today.

JOHN MCCAIN, LINDSEY GRAHAM, Members of the other body who have had experience in these matters, either as being prisoners of war or as having the opportunity to go through as a Judge Advocate General in prosecuting, understand our responsibility is to not throw away the conventions that we have committed ourselves to as Americans and to not abandon the leadership we have shown for more than 200 years in the question of human rights. This bill meets that standard.

It is not sufficient to say that convictions may be overturned if the answer is not to convict at all. We have to recognize that it is our responsibility to the American people and to the brave men and women that I have visited as a member of the Intelligence Committee who we ask to interrogate these people that we will do the right thing by them, respect international conventions and respect the basic tenets upon which this Nation was built, that of human rights. This bill does it, and I would hope all my colleagues would support it.

Mr. Speaker, I rise today in strong support of H.R. 6166. This bill is vitally important for securing America and ensuring that accused terrorists are tried for war crimes in an open and transparent court that will apply justice swiftly and fairly.

There is more to this bill than military commissions, however. H.R. 6166 addresses an issue that Supreme Court created in the Hamdan case. The Court in Hamdan decided that Common Article 3 of the Geneva Conventions—a article that many assumed only applied to regular armies—applies to terrorist organizations, like al Qaeda. As a result of this decision, our brave personnel in the military and other national security agencies are faced with' an unpredictable legal landscape because the meaning of certain elements of Common Article 3 are vague—the standard? An outrage against personal dignity.

The question, would a female interrogator of a male Muslim detainee be guilty of violating Common Article 3 because the mere scenario constitutes an outrage upon personal dignity? That kind of situation is untenable. It's unfair to our personnel out in the field trying to protect lives here at home. It is Congress' responsibility to draw the lines of what conduct will be judged criminal.

As a result, we need to amend the War Crimes Act to make clear that only grave breaches of Common Article 3 constitute a war crime under U.S. law. Let me be clear, under international law a party to the treaty is responsible for incorporating only grave breaches of Common Article 3 in its penal code. My point is simple: Today the Congress is complying with our treaty obligations under Geneva Conventions and today the Congress is following the guidance of the Supreme Correct in Hamdan (even though many believe that the Court's decision was ill construed).

Now, some have suggested that H.R. 6166 condones torture or that this bill implicitly permits ''enhanced torture techniques''. These suggestions are absolutely false and they fly in the face of the very words that appear on the pages of this bill.

First—it is illegal under U.S. law to torture. This was true before H.R. 6166 and it will remain true. Moreover, H.R. 6166 makes torture a war crime that can result in the death penalty. This means that under the War Crimes Act, any U.S. personnel that engages in torture will be subject to prosecution for committing a war crime. Additionally, in the context of military commissions, a statement obtained through torture is not admissible.

Second—this bill makes clear that the way we treat our detainees is guided by treatment standards set by the Congress—last year—in the Detainee Treatment Act, also know as the McCain amendment. This standard is based upon the familiar standards of the U.S. Constitution. Thus, ''cruel, inhuman, and degrading treatment or punishment'' under this section means the cruel, unusual, inhumane treatment or punishment prohibited by the Fifth, Eighth, and Fourteenth Amendments to the Constitution, as defined by the U.S. reservations to the UN Convention Against Torture.

Don't we all agree that the Constitution, which provides the fundamental, underlying protections for the citizens of the United States, provides more than sufficient protections for unlawful enemy combatants? Why should an accused terrorist enjoy protections that exceed what the Constitution provides every to every one of us as United States citizens?

Let me close by saying that this is an important bill for the American people—we will bring the masterminds of 9/11 to justice, and this is an important bill for the brave men and women fighting this battle—they can do their job in theater without the fear of frivolous prosecution here at home.

Mr. SKELTON. Mr. Speaker, I yield 4 minutes to the distinguished gentlewoman from California (Ms. HARMAN), ranking member of the Intelligence Committee.

(Ms. HARMAN asked and was given permission to revise and extend her remarks.)

Ms. HARMAN. Mr. Speaker, I thank the gentleman for yielding and commend him for his very impressive service as ranking member of the Armed Services Committee.

Mr. Speaker, I take a back seat to no one in my effort to understand the threats against us, find those who would cause us harm, and prevent them from harming us. I also believe strongly that Congress must act under article I, section 8 of the Constitution to regulate ''captures on land and on water.''

Since this administration started new programs to detain and interrogate terror suspects after 9/11, I have offered to help craft a new legal framework around those policies. I have called on the Vice President, his chief of staff, the National Security Adviser, and the Attorney General to help Congress craft such a framework to eliminate the fog of law. And I have argued that this new framework would empower, not limit, those who must carry out those policies because they would know that they were acting legally.

Today's bill is far from the best we can do. The rule for debate is closed, which means that none of us can improve the bill. And as debate has made clear, this bill was written by the White House in consultation with a few Republican Members. There was no bipartisan consultation and possibly none with any of the Republican members of the Intelligence Committee.

Others will address issues with immunity, coerced confession, habeas corpus, and court review. I want to address the issue which relates to the Intelligence Committee and which I believe is the primary reason for rushing the legislation through. There is a carve-out for the CIA. The bill would permit the CIA to continue a separate program for interrogation that does not comply with the Army Field Manual. If such a program is needed, then Congress must impose strict limits and ensure that we have the tools to do strict oversight.

An amendment which Mr. SKELTON and I hoped to offer today would have required notification in advance to the intelligence committees of any alternative set of interrogation procedures; a legal opinion from the Attorney General that they comply with Federal and international law; assurances that they are applied only to those we believe possess reliable, high-value, actionable intelligence; that the Army Field Manual techniques would not work; and that the use of the techniques would not adversely affect our troops who may be captured. Our amendment was not made in order, and I remain very skeptical that Congress can assure that any CIA carve-out will be limited and carefully monitored.

Mr. Speaker, we can do better. The bill negotiated by Senators MCCAIN, GRAHAM, and WARNER was better. Let us wait for the lame duck session and do this right. Vote ''no.''

Mr. HUNTER. Mr. Speaker, at this time I would like to yield 2 minutes to the gentleman who sits on both the Armed Services Committee and the Intelligence Committee and has put enormous focus on this particular bill, the gentleman from Texas (Mr. THORNBERRY).

Mr. THORNBERRY. Mr. Speaker, I think it is important to start with some important truths to remind ourselves of: one, we are in a struggle against a vicious, determined enemy who is determined to kill as many of us in as spectacular and as brutal a fashion as possible. Secondly, this struggle stretches all around the world and will go on for a long time. And, third, the enemy lives in the shadows and does

not reveal when or where or how they are going to strike. Information is the key weapon we have to prevent them from killing us and to prevent them from attacking others in the future.

This debate, as you have heard, has been mostly about what rights those few who we are able to capture, what rights, legal rights, they have under our system. But I think it is important to also remind ourselves about the critical nature of information and in stopping future attacks. In the Cold War we worried about missiles and tanks, and we could use satellites to count on. Here we are worried about three guys in a cave or half a dozen in a compound or four in a flat in London. If we don't have credible, specific information to stop those individuals and what they plan, then we will not be able to do so.

I think this is a good bill, but I also believe that it is right up to the edge of tying our own hands or, to change my metaphor, of putting blinders on ourselves, to make it very, very difficult to stop future attacks. I think it is important to do this bill now so that there is the certainty that our folks in the field, in uniform and out of uniform, desperately need to have. But we need to be careful that those of us in this Congress do not take the extra step to make their job impossible and then point the fingers at them in the future.

I think Members should support this bill, and I also believe Members should be careful in the future.

Mr. SKELTON. Mr. Speaker, I yield 2 minutes to the very distinguished gentleman from Texas (Mr. REYES).

Mr. REYES. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, as a member of the House Intelligence Committee and the House Armed Services Committee, I understand the critical need to have the best possible intelligence both to prevent terrorist attacks against our Nation and to protect our troops in the battlefield. But those who have tied passage of military commissions legislation to the collection of actionable intelligence are simply misleading the American people.

I am deeply disappointed that military commissions legislation crafted by the White House and the Republican congressional leadership does not create a system that will pass constitutional muster. Like my colleagues, I demand that our Nation prosecute those who commit terrorist acts against us, but if Congress and the White House create a system of military tribunals that will be struck down by the Supreme Court as unconstitutional, we will further delay justice for the victims of terrorism and for their families.

The Bush administration has determined that we can legally hold all enemy combatants until the end of hostilities in the global war on terrorism, and as the National Intelligence Estimate released yesterday indicated, we won't be able to declare victory in the fight against terror and extremism anytime in the foreseeable future. So I ask, why are we in such a hurry to pass legislation that may do more harm than good? Why are we putting politics above victims of terrorist acts? Why are we endangering our troops?

Protecting our Nation also includes protecting the men and women who are serving in uniform in battlefields around the world. I believe, along with other military and legal experts, that the Republican military commissions bill will be interpreted by the international community as redefining our obligations under the Geneva Conventions. Our Nation must act from a position of strength, and we must think first of protecting our citizens before weighing how the world will view our actions. However, it is very unrealistic to simply ignore the impact that the changes included in H.R. 6166 could have on members of our military.

For that reason, Mr. Speaker, in wrapping up, I cannot support H.R. 6166 as it is written. We can do much better for our troops, the victims of terrorism, and the American people.

Mr. HUNTER. Mr. Speaker, I would like to yield at this time 2 minutes to a gentleman who is himself a veteran and a former JAG officer and the chairman of the Veterans' Affairs Committee and a gentleman who has paid a lot of attention to this important subject, the gentleman from Indiana (Mr. BUYER).

Mr. BUYER. Mr. Speaker, I rise to enter into a colloquy with the distinguished chairman of the House Armed Services Committee, Mr. HUNTER.

Mr. HUNTER, as stated in section 948k of the legislation before us, military defense counsel shall be detailed to the accused as soon as practicable after the swearing of charges against the accused.

Section 949a of the legislation permits the accused to represent himself. That section also defines how the accused will conduct himself and when the military judge, in his discretion, may partially or totally revoke this right.

□ 1415

Of concern to me and some military lawyers is that, should this right be revoked, a delay of trial could occur while waiting for the detailed defense counsel of the accused or an appropriate authorized civilian counsel to get up to speed and to begin to perform the defense.

It is my understanding that the intent of the legislation allows the detailed military counsel to remain as an associate counsel should the accused exercise his right of self-representation. This ensures that even if the accused's right is revoked by the judge, the trial will continue in a timely and efficient manner.

Mr. HUNTER. Mr. BUYER, that is correct. It is the intent of the legislation that the detailed military counsel shall act as an associate counsel during the course of self-representation. As you stated, should this right be revoked, the military counsel will then proceed to represent the accused throughout the rest of the trial.

Mr. BUYER. Chairman HUNTER, I want to thank you for entering into this colloquy with me and for your work on this provision and the legislation as a whole. I would also like to thank the President. He said he would work with the House and the Senate. He has done that. Chairman, you have done that. I want to thank Senator LINDSEY GRAHAM for having done that.

Let me just share to all of my colleagues that I do believe this is a good product, Chairman HUNTER; and I want to let everybody know and understand that.

This Code of Military Commissions, it has a good balance. You have struck that.

Mr. HUNTER. Mr. Speaker, I thank the gentleman. I want to thank him for his valuable contribution.

Mr. ANDREWS. Mr. Speaker, I yield 2½ minutes to the gentleman from New York (Mr. ISRAEL), my very thoughtful friend.

Mr. ISRAEL. Mr. Speaker, I rise in opposition to this bill. The distinguished chairman of the committee, who I have a very strong respect for, opened this debate by saying that in the global war on terror we cannot read terrorists their Miranda rights. No one has said that. No one has proposed it. No one has suggested it. That is not what is being debated here. That is not what we should debate here. It is absurd.

When it comes to terrorists planning mass murder on the American people, I want to find them. I want to capture them. I want to kill them. I want to try them. If they are found guilty, I want to kill them. I believe in capital punishment for terrorists perpetrating genocide.

But because I think that we should fight and kill terrorists, I want there to be fewer of them to fight and kill. This bill says to potential terrorists, the U.S. is surrendering the moral high ground. It is unilaterally relaxing the Geneva Conventions, that we are willing to keep people locked up indefinitely without a trial.

And since I believe in executing people found guilty of perpetrating or planning a genocide on the American people, I want to make sure we are executing the right terrorists. Government is imperfect. We make mistakes. How do I know? Katrina. We lose records. How do I know? The long line of veterans at my district office who cannot get their back pay because we lost their records.

When it comes to capital punishment for terrorists, I want to make sure that we are giving them the proper trial, that we are getting the facts. If I am willing to execute them, I want to make sure it is based on fact.

And because I believe we should fight and kill terrorists, I also know that

Americans in that fight are going to be caught; and I want them treated by the same standards that we would treat our enemy's prisoners. I do not want any one of our military people to be subject to the whims and the arbitrariness of a current interpretation by a foreign enemy.

Mr. Speaker, I want to close by suggesting and telling my colleagues that I recently asked a service member, who received a Bronze Star for valor in Fallujah, what he thought about this. He said, Congressman, I do not think our enemies really care about the Geneva Conventions, but I am fighting for my country because I care about morality, because I care about strong values, because this is a good country that leads the way, and I want to continue leading the way.

If I am asking young men and women to die for what we stand for, I want to stand for something. If I am asking people to fight to kill terrorists, I want to be in the pursuit of our values, not the terrorist's values.

Mr. SKELTON. Mr. Speaker, I yield 2 minutes to the gentleman from New Jersey (Mr. ANDREWS).

Mr. ANDREWS. Mr. Speaker, everyone who has spoken in this debate on both sides I think shares a deeply held conviction that they want terrorists who would threaten this country prosecuted, convicted and punished.

Because I believe the commencement of those prosecutions is imperative for the future of the country, I will support this bill. I will do so, however, with two severe reservations which I would hope would be dealt with by the other body and in conference.

The first has to do with the issue of habeas corpus, which is a complicated word, but in this context, here is what it means: As I read this bill there is a risk that a suspected terrorist could be held for an indefinite period of time without recourse to any decisionmaker outside of the executive branch.

The constitutionally of this is ambiguous. But the wisdom of it I think is clear. It is not very wise. I think revisiting this provision as the bill goes forward would assure the constitutionality of the bill and its compliance with the Geneva Conventions.

Secondly, I am concerned about the fact that there has been an insufficient procedure for us to consider this bill. There have been many good ideas dealing with habeas corpus, dealing with issues of retroactive immunity that I think deserve a full and fair airing and hearing on this floor. This is an unfortunate procedure in which we find ourselves.

My concern is it will be our sole opportunity, given the way things go around here, to voice our opinions on this. I do think that the underlying provisions of this bill are consistent with the spirit and letter of our obligations under the Geneva Conventions.

I have concluded that compliance with these conventions is essential so we can go forward in prosecuting and trying those who threaten our country. I believe this process needs great improvement. I think this bill needs one very specific improvement. But to move it forward, I will vote ''yes.''

Mr. SKELTON. Mr. Speaker, I yield 5 minutes to the gentleman from Maryland (Mr. HOYER).

Mr. HOYER. I thank the gentleman for yielding.

Mr. Speaker, I wanted nothing more than to come to this floor today and vote for a military commissions bill that comports with our American values, that the rest of the world would see as fair and humane, that honors our international commitments and protects our own troops who fall into enemy hands and, as the ranking member has pointed out, the Supreme Court would uphold.

I regret that the chairman and the ranking member are not shoulder to shoulder on this issue, as should be the case. Too often have we considered these weighty matters of defending our country, defeating terrorism, protecting Americans in a partisan fashion. I think that is regrettable. I think the American people think it is regrettable.

Make no mistake. Every single Member of this House wants our President to have the intelligence necessary to prevent future terrorist acts on our Nation and our allies. Every single one of us wants those responsible for 9/11 and other terrorist acts to be tried fairly and punished accordingly. And we want those convictions to be upheld by the courts, and we want to stop future attacks.

But, regrettably, the bill before us today, in my opinion, falls far short of the high standards that this Congress and the American people expect and demand and indeed that the world expects of America. This legislation at bottom is really more about who we are as a people than it is about those who seek to harm us.

That is true if it were domestic. It is true internationally. No one wants to defend murderers and rapists, those who would harm our people, whether they live here or they live abroad. However, defending America requires us to marshal the full range of our power, diplomatic and military, economic, and, yes, moral. And when our moral standing is eroded, our international credibility is diminished as well.

We must not lightly dismiss the somber warning of our former Secretary of State, the leader of our Armed Forces, Chairman of the Joint Chiefs of Staff, serving on the administrations of President Bush I, and serving as his Secretary of State.

He said this, and I quote Colin Powell: ''The world is beginning to doubt the moral basis of our fight against terrorism. I fear this legislation before us will further diminish that credibility.''

While this bill properly lists as punishable offenses certain grave breaches of article 3 of the Geneva Conventions, it leaves almost unfettered discretion to the administration to define anything less than such grave breaches.

Why should we be concerned about providing this administration with such discretion, one might ask? Because our President and our Attorney General have routinely flouted congressional authority with signing statements and legal interpretations, which give to them unfettered authority.

As the Washington Post has stated, and again I quote: ''The Bush administration's history is one of interpreting limitations on interrogation tactics, including Mr. MCCAIN's previous legislation, banning cruel, inhuman and degrading treatment, as permitting methods most people regard as torture.''

Furthermore, Mr. Speaker, this bill eliminates the fundamental legal right of habeas corpus. What is habeas corpus about? Why should we care for terrorists who attack our country? Because we might make a mistake. That is why we build in protections, to protect against mistakes because we are human.

The bill would greatly minimize judicial oversight by establishing a new appeals process and centralizing consideration of cases in the District of Columbia Court of Appeals, thus stripping other appellate courts from hearing cases currently pending before them.

Mr. Speaker, I am absolutely committed to winning the war on terrorism and bringing to justice any and all terrorists who would threaten us, harm us or cause harm to our country. However, I also believe we have an obligation to the Constitution and to our oath to do so in a manner that is consistent with our values, that makes us different than other nations in the world, that secures just convictions and that enhances our international credibility, thereby strengthening our national security.

I end as I started. I regret that I cannot support this legislation, and I are regret that it is not being offered in a bipartisan fashion. It would have been better for us, for the people, and for our country.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. LAHOOD). The Chair reminds all persons in the gallery that they are here as guests of the House and that any manifestation of approval or disapproval of proceedings or other audible conversation is in violation of the rules of the House.

Mr. HUNTER. Mr. Speaker, I yield myself 30 seconds.

Mr. Speaker, I want to set the gentleman straight who just spoke. Every single person held in Guantanamo has the right and will have the right under this legislation to contest whether or not they are, in fact, combatants and the status of their being swept up on the battlefield inadvertently or being, in fact, true enemy combatants. They will have that right.

That is, in my estimation, an important type of habeas corpus. That is preserved in this bill.

Mr. Speaker, I yield 1 minute to the gentleman from Louisiana (Mr. BOUSTANY).

Mr. BOUSTANY. Mr. Speaker, I rise in strong support of H.R. 6166. I want to compliment both Chairman HUNTER and Chairman SENSENBRENNER for bringing forth a very good bill and their prodigious work on this issue. I also want to commend Chairman STEVE BUYER for his fine leadership as well on this issue.

Mr. Speaker, it is time for the terrorists responsible for planning the most horrendous attack on U.S. soil and who continue to plan terrorist acts to be brought to justice. We have an obligation to the American people to deliver justice upon these criminals, as well as an obligation to the international community to uphold our treaty obligations.

I, too, had some concerns about this at the outset, but I think this bill addresses the concerns. I am pleased that this bill contains provisions that will maintain our commitment to common article 3 of the Geneva Conventions, while also providing the necessary protection to U.S. personnel. This bill sets forth a fair, effective process consistent with our values, our laws and our obligations.

Mr. Speaker, in closing, I urge swift passage of the Military Commission Act of 2006, so that we can continue to prosecute these terrorists intent on causing violence to innocent victims.

□ 1430

Mr. SKELTON. Mr. Speaker, I yield 1 minute to the distinguished gentleman from New York (Mr. CROWLEY).

Mr. CROWLEY. Mr. Speaker, I believe it is my belief my colleagues on the other side of the aisle care more about giving the President what he wants rather than what is in the best interests of the American people, the people that we are sent here to represent.

I know that these terrorists are vicious murderers. I have experienced it firsthand. I always thought I was safe in my warm, little comfortable bed in Woodside, Queens, New York. I know it is no longer the case, but it is my values as an American and those values that I hold dear that keeps that hatred in check.

We must lead by example on these issues, not be evasive quasi-participant in the rule of law.

Our soldiers are abroad fighting a battle that I believe our President has not allowed them to win because of his continued mismanagement.

The National Intelligence Estimate says that the war in Iraq has actually invigorated the growth of terrorism and worsened its threat around the globe.

Today, we could have had an opportunity to fix one of those mistakes, but we are ignoring that opportunity and ignoring the respect for due process and denying habeas corpus to detainees.

I cannot and will not support this legislation.

Mr. SKELTON. Mr. Speaker, I yield 1 minute to the gentleman from Washington (Mr. INSLEE).

(Mr. INSLEE asked and was given permission to revise and extend his remarks.)

Mr. INSLEE. Mr. Speaker, we ought to hold this truth to be self-evident, that no President should be given the ability to hold people in detention indefinitely without review by the judicial branch.

We should never yield to al Qaeda, not one inch, not one right, not one American principle; but, today, in this bill, we yield a fundamental American principle, the principle that no executive, no President, should have the untrammeled ability to be free of checks and balances that have kept our country so free in the last 230 years. That principle of writ of habeas corpus has been fundamental, and it is destroyed in this bill.

When we learn that George Bush's policy has kept a man in detention for years who was totally innocent without trial, it was not just he who suffered. It was we who had a wound as well.

We do not care about the terrorists' displeasure here, but we do care about the principled integrity of our country, about the light of liberty that so attracts the world. It is that light that will help us win the war on terrorism, not just the light of our bombs. This is the principal weapon in our arsenal. It is the light of liberty, may it ever shine.

Reject this bill. Go back to the drawing board.

Mr. SKELTON. Mr. Speaker, I yield 1½ minutes to the gentleman from New Jersey (Mr. HOLT).

(Mr. HOLT asked and was given permission to revise and extend his remarks.)

Mr. HOLT. Mr. Speaker, I rise in opposition to this measure which will not preserve principles of justice upon which this Nation was founded. How true we are to our ideals affects the clarity and decisiveness with which our soldiers can act, the safety of our troops, the motivation of our potential enemies, and the behavior of our actual enemies.

This bill provides protections that are vague, slippery and imprecise. It is subject to interpretation by the President, by the Secretary of Defense, by our commanders in the theaters of operation, by our troops in the field, by our friends and enemies around the world.

We need a bill that does at least two things. It should provide a clear set of guidelines consistent with American principles such as in our revised Army Field Manual; guidelines that apply to all U.S. Government personnel, on how to treat prisoners; guidelines that preserve our principles.

Second, it should include verification mechanisms to monitor how prisoners and detainees are treated. One of those mechanisms is already in use by police departments and prosecutors across the country: the videotaping of interrogations.

Videotaping has proven to be extremely effective at preventing not just abuse of detainees but also false allegations of abuse by detainees against their interrogators. The practice aids in interrogation, and it protects the enforcers, the prosecutors, the defendants and, hence, protects all of us. By not including such a provision in the bill, the drafters missed a real opportunity to ensure that we prevent serious problems in the future.

Last night in the Rules Committee, I offered an amendment that would have replaced a few critical provisions of H.R. 6166 with text that Senators WARNER, MCCAIN, and GRAHAM put forward two weeks ago emphatically supporting the principle that everyone, even detainees in Guantanamo, should be allowed to examine and respond to all evidence presented against them at trial. Of course, The Rules Committee denied Members the opportunity to vote on this and other amendments on the floor today.

Mr. SKELTON. Mr. Speaker, I yield 2 minutes to the gentleman from Oregon (Mr. WU).

(Mr. WU asked and was given permission to revise and extend his remarks.)

Mr. WU. Mr. Speaker, I want to focus like a laser beam on the right of habeas corpus and the untoward effect of this legislation on habeas corpus. This is an ancient doctrine that has been with us since at least the days of Charles I. It has presented difficulties to many American Presidents from Jefferson to Lincoln to Grant to Roosevelt.

We have the power to do much in restricting habeas corpus; but we should do so very, very carefully because it is the protection from tyranny that our forebears sought in the Revolution.

Congress here is entering upon dangerous constitutional shoal waters, and it is, in my belief, unconstitutionally limiting access to habeas corpus. The courts have repeatedly ruled in a restricted fashion whenever Congress or the Presidency has restricted access to habeas corpus and each of us, not just the Supreme Court, but we in the Congress and those in the executive branch, we all take an oath to uphold the Constitution of the United States, and this act, by restricting habeas corpus, will not serve America well.

And by so restricting habeas corpus, this bill does not just apply to enemy aliens. It applies to all Americans because, while the provision on page 93 has the word ''alien'' in it, the provision on page 61 does not have the word ''alien'' in it.

Let us say that my wife, who is here in the gallery with us tonight, a sixth generation Oregonian, is walking by the friendly, local military base and is picked up as an unlawful enemy combatant. What is her recourse? She says,

I am a U.S. citizen. That is a jurisdictional fact under this statute, and she will not have recourse to the courts? She can take it to Donald Rumsfeld, but she cannot take it across the street to an article 3 court.

This bill applies to every American, regardless of citizenship status.

Mr. SKELTON. Mr. Speaker, I yield 4 minutes to the distinguished gentleman from Ohio (Mr. KUCINICH).

Mr. KUCINICH. Mr. Speaker, I want to thank the distinguished gentleman from Missouri, and let my colleagues know that I have read the bill and what I read here is pretty chilling. Matter of fact, I want to quote something from the bill that has not been discussed and ask that all of my friends read this bill so that we can see if this really reflects what we want to do and the implications this could have for Members of Congress because I have stood on this floor time and time again to protect this institution, and I want Members of Congress to think about this provision.

You know, we have heard the President make comments that people who oppose this bill are really hurting the United States. We have all heard him say this.

Section 26, wrongfully aiding the enemy. Any person subject to this chapter, by the way anybody is who in breach of an allegiance or duty to the United States knowingly and intentionally aids an enemy of the United States or any of the co-belligerents of the enemy shall be punished as a military commission under this chapter may direct.

I want to know, are Members of Congress who challenge this administration as to their taking us into illegal wars, is that somehow contrary to allegiance to the United States? I mean, we need to think about this. What are we doing to this institution here? Are we turning us all into mice here, running into a corner because we are afraid to challenge the President?

I mean, my friends who are Republicans, stand up for the Republic, to the Republic for which it stands. Stand up for the Republic. Read this provision in this bill.

There is another provision in the bill that I think deserves a careful look. Suppose a President sometime in the future declares that some country has weapons of mass destruction, and based on those claims, the Congress moves quickly to give the President the authority to wage war, and then war is waged and hundreds of thousands of civilians are killed as collateral damage, and then we find out later on they did not have weapons of mass destruction, and then you have all these dead people, but they were collateral damage. Under this bill, which I have read, collateral damage is precluded from applicability with respect to the enforcement of the rule of law, or if there is a lawful attack, collateral damage is precluded from being cited.

Now, suppose that happened in this country. That would be so awful that something like that happened, but essentially we are giving a get-out-of-jail free card to the very officials who could lead this country down a path to war and kill innocent people based on lies.

I do not see this as a Republican or a Democrat argument. I see this as a question of whether we stand up for what this country was founded upon. What are we about? What do we believe in? That is what we have to answer here, and this bill is everything we do not believe in.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. LAHOOD). The Chair notes a disturbance in the gallery in violation of the rules of the House and directs the Sergeant at Arms to restore order.

Mr. SKELTON. Mr. Speaker, I yield 3½ minutes to the gentleman from California (Mr. SCHIFF).

Mr. SCHIFF. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, it has taken over 5 years since September 11 for the administration to finally come to Congress and seek legislation establishing military tribunals to try terrorist suspects.

For over 4 years now, many of my Democratic colleagues and I have urged this Congress to act in this area. Four-and-a-half years ago I introduced legislation, other of my colleagues did the same, to establish military tribunals, and we introduced that legislation for two reasons: first, because we should detain people who mean to harm our country and mean to injure our citizens; and, second, because the administration's unilateral act in establishing these commissions was on the most dubious of constitutional grounds and we did not want to be where we are today, 5 years hence, with a system that was struck down by the Supreme Court, where people have not been brought to justice.

But here we are. It has taken the majority and the administration 5 years to get here, but here we are.

Terrorists who seek to harm this country must be captured. They must be tried, detained and punished to protect our country, and there is a way to detain them, to gather valuable intelligence from them, to try and convict them without sacrificing our ideals as a Nation.

We are at war with a vicious enemy who seeks to destroy our way of life. It is a military fight; but in a broader sense, it is also a war of ideas.

America has always been not only a Nation it has been an idea and when we sacrifice that idea, it is a setback in this war of ideas.

So we have to ask ourselves where does this position us? Where does this bill position us in the war of ideas? Are we advancing or are we retreating when we are perceived as abandoning the rule of law? When we are perceived as defining what it means to be cruel or inhuman or degrading?

□ 1445

When we wonder out loud in the legislative process whether a Nation so conceived as ours can long endure without cruel and inhuman treatment? When we show to the world that we are questioning the very idea of America, whether this Nation can long endure with a respect for the rule of law, with respect for the concept that people who are detained by America will not be mistreated, that people detained by America will have a right to confront evidence against them will have the sacred right of habeas corpus?

When we put forward legislation that says that an American can be plucked off the street, given a label unilaterally by any administration, by this President or the next, as an unlawful enemy combatant, and all their rights evaporate once they are given that label, that calls into question the very idea of America; and that, I believe, is a setback in the war of ideas.

We can do better than this bill. And, in fact, on Friday, we had better than this bill, when Senator WARNER and Senator MCCAIN came forward with what I thought was a sound compromise. We had a sound compromise on Friday, but during the weekend that unraveled. During the weekend, I think we took a step back in the war on ideas.

It was not an irrevocable step back. The majority and the administration has waited 5 years to bring us legislation on this subject. Let us take another 5 days, if it takes it, to get it right.

We shouldn't be retreating back to our districts just because of our election and leaving the work undone or done poorly. And I regret to say that this bill is done poorly, and it must be changed.

Mr. HUNTER. I want to take 30 seconds, Mr. Speaker, just to remind my friend who just spoke that this bill is largely the product of not only this body but Senator WARNER, Senator MCCAIN, and Senator GRAHAM. Shortly, they are going to be introducing the precise same bill in the other body.

And, Mr. Speaker, in this bill, military commissions, if you will check on page 7, to answer the gentleman who just spoke who thought his wife might in some wild circumstance be prosecuted under this bill, this bill gives jurisdiction and military commissions, on line 24, page 7, to alien unlawful enemy combatants. It does not take away the habeas rights of U.S. citizens.

Mr. Speaker, I reserve the balance of my time.

Mr. SKELTON. Mr. Speaker, at the request of the Democratic leader, I submit for the RECORD a letter from various religious organizations dated September 27.

SEPTEMBER 27, 2006.

DEAR REPRESENTATIVE: We are writing to strongly encourage you to reject the ''compromise'' Military Commissions Act of 2006 and to vote no on final passage of the bill. More than anything else, the bill compromises America's commitment to fairness and the rule of law.

For the last five years the United States has repeatedly operated in a manner that betrays our nation's commitment to law. The U.S. has held prisoners in secret prisons without any due process or even access to the Red Cross and has placed other prisoners in Guantanamo Bay in a transparent effort to avoid judicial oversight and the application of U.S. treaty obligations. The federal government has operated under legal theories which dozens of former senior officers have warned endanger U.S. personnel in the field and has produced legal interpretations of the meaning of ''torture'' and ''cruel, inhuman and degrading'' treatment which had to be abandoned when revealed to the public. Interrogation practices were approved by the Department of Defense which former Bush Administration appointee and General Counsel of the Navy Alberto Mora described as ''clearly abusive, and * * * clearly contrary to everything we were ever taught about American values.'' According to media reports the CIA has used a variety of interrogation techniques which the United States has previously prosecuted as war crimes and routinely denounces as torture when they are used by other governments.

Instead of finally coming to grips with this situation and creating a framework for detaining, interrogating and prosecuting alleged terrorists which comports with the best traditions of American justice, the proposed legislation will mostly perpetuate the current problems. Worse, it would seek to eliminate any accountability for violations of the law in the past and prevent future judicial oversight. While we appreciate the efforts various members of Congress have made to address these problems, the ''compromise'' falls far short of an acceptable outcome.

The serious problems with this legislation are many and this letter will not attempt to catalogue them all. Indeed, because the legislation has only just been made available, many of the serious flaws in this long, complex bill are only now coming to light. For instance, the bill contains a new, very expansive definition of enemy combatant. This definition violates traditional understandings of the laws of war and runs directly counter to Pres. Bush's pledge to develop a common understanding of such issues with U.S. allies. Because the proposed definition of combatant is so broad, the language may also have potential consequences for U.S. civilians. For instance, it may mean that adversaries of the United States will use the definition to define civilian employees and contractors providing support to U.S. combat forces, such as providing food, to be ''combatants'' and therefore legitimate subjects for attack. Yet, there has been no opportunity to consider and debate the implications of this definition, or other parts of the bill such as the definitions of rape and sexual abuse.

We strongly oppose the provisions in the bill that strip individuals who are detained by the United States of the ability to challenge the factual and legal basis of their detention. Habeas corpus is necessary to avoid wrongful deprivations of liberty and to ensure that executive detentions are not grounded in torture or other abuse.

We are deeply concerned that many provisions in the bill will cast serious doubt on the fairness of the military commission proceedings and undermine the credibility of the convictions as a result. For instance, we are deeply concerned about the provisions that permit the use of evidence obtained through coercion. Provisions in the bill which purport to permit a defendant to see all of the evidence against him also appear to contain serious flaws.

We believe that any good faith interpretation of the definitions of ''cruel, inhuman and degrading'' treatment in the bill would prohibit abusive interrogation techniques such as waterboarding, hypothermia, prolonged sleep deprivation, stress positions, assaults, threats and other similar techniques because they clearly cause serious mental and physical suffering. However, given the history of the last few years we also believe that the Congress must take additional steps to remove any chance that the provisions of the bill could be exploited to justify using these and similar techniques in the future.

Again, this letter is not an attempt to catalogue all of the flaws in the legislation. There is no reason why this legislation needs to be rushed to passage. In particular, there is no substantive reason why this legislation should be packaged together with legislation unrelated to military commissions or interrogation in an effort to rush the bill through the Congress. Trials of the alleged ''high value'' detainees are reportedly years away from beginning. We urge the Congress to take more time to consider the implications of this legislation for the safety of American personnel, for U.S. efforts to build strong alliances in the effort to defeat terrorists and for the traditional U.S. commitment to the rule of law. Unless these serious problems are corrected, we urge you to vote no.

Sincerely,

Physicians for Human Rights; Center for National Security Studies; Amnesty International U.S.A.; Human Rights Watch; Human Rights First; American Civil Liberties Union; Open Society Policy Center; Center for American Progress Action Fund; The Episcopal Church; Jewish Council for Public Affairs; Presbyterian Church (USA), Washington Office; Maine Council of Churches; Pennsylvania Council of Churches; Wisconsin Council of Churches; Brennan Center for Justice at NYU Law School; Robert F. Kennedy Memorial Center for Human Rights; Center for Constitutional Rights; The Bill of Rights Defense Committee; Unitarian Universalist Service Committee; Leadership Conference of Women Religious; Center for Human Rights and Global Justice, NYU School of Law; The Shalom Center; Washington Region Religious Campaign Against Torture; The Center for Justice and Accountability; Center of Concern; Justice, Peace & Integrity of Creation Missionary Oblates; Rabbis for Human Rights—North America; Humanist Chaplaincy at Harvard University; No2Torture.

Mr. Speaker, I yield 2 minutes to the gentlewoman from California (Ms. LEE).

Ms. LEE. Mr. Speaker, I want to thank the gentleman for yielding and for his leadership and his commitment to our young men and women in uniform throughout the world.

At a time when even the National Intelligence Estimate has concluded that the occupation in Iraq has spawned a new generation of terrorists and made us, quite frankly, less safe, this bill now will undermine the security of our brave troops and hand a victory to those who believe the rule of force should prevail over the rule of law.

I have to say once again, as the daughter of a 25-year military Lieutenant Colonel who served this country in many, many capacities through two wars, that this scares me. It scares me to death.

What century are we living in when we trust intelligence acquired through torture? Clearly, the President fails to realize that these techniques will destroy the credibility of any verdicts that use information derived from torture.

Insisting on fairness and just credibility is all we are asking for, credibility in the process. This isn't about protecting those who would harm us, as the Republicans would have you believe, it is about protecting our own troops and our Nation and not further alienating our country in the eyes of the world community.

When we turn away from the legal and the moral values that have guided our Nation, we give up the principles that differentiate us from the terrorists.

I quoted from a prayer given by Reverend Baxter at the National Cathedral during the memorial service for the victims and families of 9/11 5 years ago, and Reverend Baxter said, and I keep thinking about this prayer, he said, ''Let us not become the evil who we deplore.''

So I just want to urge a ''no'' vote on this bill; and I want to thank Mr. SKELTON for his leadership, for his support for the troops, for his steadfast work on behalf of our national security, and for making sure that this body continues to try to uphold the rule of law.

Mr. SKELTON. Mr. Speaker, I yield 2 minutes to the gentleman from Virginia (Mr. MORAN).

Mr. MORAN of Virginia . I thank my good friend, an inspirational leader on the Armed Services Committee.

I oppose this bill. It would send a message to the world that the United States can disregard international treaties and law and, instead, do as it pleases. For generations, we have been the beacon to guide the actions of other nations. If we descend from the high moral ground, we are, in effect, losing ground to the terrorists.

Secretary of State Colin Powell was so accurate when he said, part of this war on terrorism is an ideological and political struggle. Our moral posture is our best weapon to prevail in that struggle.

Mr. Speaker, this is not a good bill. Since the inception of the Geneva Conventions 60 years ago, no other country in the world has tried to undermine and negate its provisons its spirit as this bill would.

For enemy combatants, the bill eliminates the right of habeas corpus. This is a right enshrined in our Constitution that may be abandoned only, and I quote, ''when in cases of rebellion or invasion the public safety may require it.'' The elimination of habeas is not just illegal, it is flat out wrong.

The purpose of habeas corpus is simple. It is to avoid injustice, to avoid the detention by government of any individual that is erroneous, unwarranted, or in violation of law. This purpose and the values from which it stems do not distinguish among individuals or circumstances. They seek to avoid any injustice to any detained individuals.

All Americans want to hold terrorists accountable, but if we try to redefine the nature of torture, whisk people into secret detention facilities and use secret evidence to convict them in special courts, our actions do, in fact, embolden our enemies more than any extremist rhetoric could ever do.

This bill needs to be defeated.

Mr. HUNTER. Mr. Speaker, I yield 30 seconds to the gentleman from Indiana (Mr. BUYER).

Mr. BUYER. Mr. Speaker, I want to make sure the debate has clarity. To the gentleman, when you say this bill applies to everyone or all American citizens, that is completely false. I want the gentleman to know that.

I would like you to know that when you refer to page 61, at the top it says, provisions of this chapter. So an earlier speaker brought us this issue about, well, it doesn't say the word alien. In order to be tried under the Code of Military Commissions, you have to be an alien. So when you go to page 7, you look at line 17, section 948c, it says the persons who are subject to a military commission is any alien unlawful enemy combatant.

So this does not apply to American citizens.

Mr. SKELTON. Mr. Speaker, I yield 30 seconds to the gentleman from Virginia (Mr. MORAN).

Mr. MORAN of Virginia. I thank the ranking member.

Mr. BUYER, I have been to Guantanamo, as I am sure you have been, and I was stunned at the fact that the vast majority of people detained at Guantanamo were not in fact caught on the battleground. Many of these people were put there by bounty hunters. They were in the wrong place at the wrong time.

After 5 years, they have very little information to provide us. Those 14 that we are now putting at Guantanamo should not redefine the vast majority of the prisoners at Guantanamo who do in fact deserve a fair trial.

Mr. SKELTON. Mr. Speaker, I yield an additional 30 seconds to the gentleman from Oregon (Mr. WU).

Mr. WU. Mr. Speaker, I would like to respond to the two chairmen's remarks that I was incorrect in my analysis of the law or of the proposed bill.

I stand by that analysis, and not only is that analysis correct, but this reference to the detention act as a cure for that is totally specious, because this detention act we passed as a rider to an appropriations bill. So any remedy provided by the detention act goes away in the year of appropriation.

If you read that language, that word alien does appear on page 93, but the determination of that jurisdictional fact will be done by a military tribunal, and that is not where American civilians should have their rights determined.

Mr. SKELTON. Mr. Speaker, may I inquire as to the amount of time remaining?

The SPEAKER pro tempore. The gentleman from Missouri has 1 minute remaining, and the gentleman from California has 3½ minutes remaining.

Mr. SKELTON. May I inquire, Mr. Speaker, does the gentleman choose to close?

Mr. HUNTER. We just have one other speaker, then I am going to reserve the balance.

Mr. SKELTON. Mr. Speaker, I reserve the balance of my time.

Mr. HUNTER. Mr. Speaker, I yield 30 seconds to the gentleman from Indiana (Mr. BUYER) for a response.

Mr. BUYER. I just want to share with the gentleman, I have to go back, you have to look at the four corners of the document. Please don't dive into rhetoric.

When you go to the four corners of the document, it is very clear who is subject to the Code of Military Commissions. So, in title 18, you will have the Federal Code that applies to U.S. citizens; you will have the UCMJ creating a third chapter that will apply to unlawful enemy combatants, the Code of Military Commissions. It will not apply to United States citizens.

It is very, very clear. If you think it applies to somebody else, sir, I cannot get into your mind, but I just want you to know that the world will be able to see what we have created here does not apply to American citizens.

Mr. HUNTER. Mr. Speaker, at this time, I would like to yield 1 minute to the gentlewoman from Texas (Ms. GRANGER).

Ms. GRANGER. Mr. Speaker, each Member in this House comes to Congress with his own agenda, his district's needs, and his committee requests, but the one thing that should surmount all those individual desires, needs, and energies is the commitment to keep our Nation safe.

Fourteen terrorists are now being held at Guantanamo Bay awaiting trial. Thousands of the family members of Americans killed on September 11 are awaiting justice, and our constituents are waiting for Congress to act. The bill we have before us helps make that possible. It sends a message to the extremists that if they plot to kill or harm our citizens, America will find them, get the information they have, and bring them to justice. And it sends a message to those who fight to protect our freedom that we will protect them, too.

I do not know of anything that this Congress can do that is more important than passing this bill today, a bill carefully crafted, protecting classified intelligence information, providing clear guidelines for our intelligence officers who are responsible for interrogating those terrorists, and keeping our promises to the American people to do everything we can to keep them safe.

Mr. Speaker, I am proud to support this bill, and I thank those responsible for bringing it to the floor.

Mr. SKELTON. Mr. Speaker, I yield 15 seconds to the gentleman from Oregon (Mr. WU).

Mr. WU. I stand by my analysis of the proposed bill. The two chairmen stand by theirs. This is the best reason why this bill should not be rushed through. The staff cannot be held responsible for drafting errors, and we should not be rushing this kind of legislation through without the careful consideration that it deserves.

Mr. SKELTON. Mr. Speaker, this is a day in constitutional history that will stand out like Mars at perihelion. We want tough, but we also want certainty in any conviction that comes from this tribunal; and I am fearful, Mr. Speaker, that this legislation is an invitation for reversal by the Supreme Court.

We want to be tough on those despicable people, but we also want a conviction to withstand the scrutiny of our Supreme Court and our judicial process.

Mr. Speaker, I yield back.

Mr. HUNTER. Mr. Speaker, at this time I reserve the balance of my time, which I believe is 2 minutes, and move to the Judiciary Committee.

□ 1500

The SPEAKER pro tempore. The gentleman from California (Mr. HUNTER) reserves the balance of his time, which is 2 minutes; and the gentleman from Wisconsin (Mr. SENSENBRENNER) is recognized.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H.R. 6166, the Military Commissions Act of 2006.

This legislation is critical to the national security interests of the United States. The bill creates a fair and orderly process to detain and prosecute al Qaeda members and other dangerous terrorists captured during the war on terror. It also sets clear ground rules pertaining to how we will treat these prisoners in our custody. The way we treat terrorist enemy combatants sends a strong signal to the rest of the world about our commitment to the rule of law.

This legislation says to the world that the U.S. rejects torture, rejects cruel and inhumane treatment and rejects other tactics commonly used by our terrorist enemies. It says that we will not subject enemy combatants in our custody, many of whom planned and supported the largest mass murder ever on American soil, to the cruel and brutal treatment they regularly utilize against our soldiers and our civilians.

At the same time, this bill also makes it clear to the terrorists and their lawyers that America will not allow them to subvert our judicial process or disrupt the war on terror with unnecessary or frivolous lawsuits. The bill strikes the right balance. It establishes a mechanism that is full and fair, but also orderly and efficient.

In the aftermath of the 9/11 attacks, the administration began detaining foreign terrorists as ''enemy combatants'' at Guantanamo Bay and instituted procedures to review their status

and to prosecute them for war crimes by military commissions authorized by the President. During this time, detainees filed suit in Federal Court to challenge the legality of their detention and of the commissions.

The Supreme Court then held in the Rasul case that the Federal habeas corpus statute protected Gitmo detainees. To address Rasul, Congress passed the Detainee Treatment Act of 2005, which barred habeas and other lawsuits by detainees in U.S. custody, but provided for limited judicial review of DOD detention decisions by the D.C. Circuit.

In June, the Supreme Court held in Hamdan that the DTA did not bar nearly 200 habeas corpus petitions and the other lawsuits by detainees pending on the date of enactment, despite clear statutory language and Supreme Court precedents to the contrary.

This bill clarifies congressional intent to prohibit any habeas corpus petitions or other lawsuits pending on or filed after enactment brought by any alien in U.S. custody detained as an enemy combatant or awaiting such a determination.

The Supreme Court has never, never held that the Constitution's protections, including habeas corpus, extend to non-citizens held outside the United States. In fact, the Supreme Court rejected such an argument in 1950 in the case of Johnson v. Eisentrager. Moreover, in the 1990 Verdugo case, the Court reiterated that aliens detained in the United States but with no substantial connection to our country cannot avail themselves of the Constitution's protections. As a result, any argument that this bill breaks new ground or improperly denies detainees certain constitutional rights is both groundless and misguided.

Despite the fact that detainees have very few rights under our Constitution, this bill reflects Congress's statutory determination that they are entitled to an orderly process and a full and fair review of the government's core decisions authorizing their detention by the D.C. Circuit, a respected article 3 court.

As we consider this legislation, it is important to remember first and foremost that this bill is about prosecuting the most dangerous terrorists America has ever confronted. Individuals like Khalid Sheik Mohammed, the mastermind of the 9/11 attacks, or Ahbd al-Nashiri, who planned the attack on the USS *Cole*. None of their victims was treated with the kind of respect for human life and the rule of law embodied in this legislation which will apply to them.

I urge my colleagues to support this vital legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. CONYERS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this is a very important discussion today, and we have an opportunity to consider whether we are willing to respect the ideals of law and human dignity in actuality rather than just in rhetoric. This legislation goes to the core of who we are as a nation.

So I begin the Judiciary Committee's discussion of this matter on two points simply. The first is the point on habeas corpus. Because, you see, we have determined that detainees will not have the ability to challenge the conditions of their detention in court unless and until the administration decides to try them before a military commission. Those who are not tried will have no recourse to any independent court at any time.

So because people have been encouraging each other to read the bill, I want to turn to page 93, line 12, where the habeas corpus matters are included. Here is what it says: ''No court shall hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the United States who has been determined by the United States to have been properly detained as an enemy combatant.''

There is where 62 law professors from dozens of universities tell us that what we are doing is changing the hallowed writ of habeas corpus so that it will not apply by law. We are by law changing a constitutional provision.

The other important part of our discussion on the Judiciary Committee, and, by the way, I hope that the ranking member of the Armed Services Committee can serve on the Judiciary Committee, because he has made some excellent legal arguments today, the other point that I would bring to your attention is that the President will now, under these provisions in the bill, be allowed to interpret the Geneva Conventions, especially common article 3, the way that he wants and to exclude it from other review by the courts. By eliminating the judicial review of executive acts as significant as detention and domestic surveillance, this cannot be squared with the principles of transparency and the rule of law on which our constitutional democracy rests.

Congress would gravely disserve our global reputation as a law-abiding country by enacting bills that seek to combat terrorism by stripping judicial review. I refer my colleagues to page 83, section 6, relating to treaty obligations. Here it is. This is the bill:

''(3) Interpretation by the President. As provided by the Constitution and by this section, the President has the authority for the United States to interpret the meaning and application of the Geneva Conventions and to promulgate higher standards and administrative regulations for violations of treaty obligations which are not grave breaches of the Geneva Conventions.

''The President shall issue interpretations that will be published in the Federal Register.''

So what we have done now is give to the President, and I think it is about time somewhere in the proceedings that this be made public knowledge, give the President exclusive power to interpret the common article 3 of the Geneva Conventions and that it would be unreviewable.

It is upon these two points that I would urge that the Members of the House of Representatives on this day go on record as refusing to accede to these onerous provisions of a bill that would change the course of America's relationship, historic relationship, with international treaties.

WRITTEN TESTIMONY OF JONATHAN HAFETZ BEFORE THE U.S. SENATE COMMITTEE ON THE JUDICIARY, SEPTEMBER 25, 2006

DEAR SENATOR SPECTER, SENATOR LEAHY, AND MEMBERS OF THE COMMITTEE: Thank you for the opportunity to submit this statement in connection with today's hearing. (''Examining Proposals to Limit Guantánamo Detainees Access to Habeas Corpus Review''). My comments focus on the historical foundations of habeas corpus that are relevant to the Committee's consideration of the proposed legislation, S. 3930. As the United States Supreme Court has repeatedly made clear, the Constitution, at a minimum, protects the writ of habeas corpus as it existed in 1789. Eliminating habeas corpus for prisoners held at Guantánamo Bay would be inconsistent with centuries of tradition and would fall below the review required by the Constitution.

I am currently Counsel at the Brennan Center for Justice at New York University School of Law. The Brennan Center is a nonpartisan institution dedicated to safeguarding access to justice and the rule of law through scholarship, public education, and legal action. One of the Brennan Center's primary goals is to ensure accountability, transparency, and checks and balances in the formulation and implementation of national security policy.

During the past decade, I have focused extensively on the history of habeas corpus. My scholarly articles and amicus curiae briefs on habeas have been cited by the Supreme Court and federal courts of appeals. I hold a J.D. from Yale Law School and a Masters Degree in History from Oxford University.

My comments are organized as follows. First, I describe the historical roots of habeas corpus as a check against unlawful executive detention and how those protections are guaranteed under the Constitution and laws of the United States. Second, I explain the writ's broad territorial scope and guarantee of a searching examination of the factual and legal basis for a prisoner's detention. Third, I show that habeas corpus secures another fundamental requirement of the common law and due process—the right to be free of detention based on evidence gained by torture. Finally, I explain why appellate review under the Detainee Treatment Act of 2005 of a Combatant Status Review Tribunal determination does not provide an adequate and effective substitute for constitutionally mandated habeas. To the contrary, such review would foreclose any meaningful inquiry into the factual and legal basis for a prisoner's detention and sanction evidence secured by torture and other coercion.

I. HABEAS CORPUS PROVIDES A CHECK AGAINST UNLAWFUL EXECUTIVE DETENTION

For centuries, the writ of habeas corpus has provided the most fundamental safeguard against unlawful executive detention in the Anglo-American legal system. William Blackstone praised habeas as the ''bulwark'' of individual liberty, while Alexander Hamilton called it among the ''greate[st] securities to liberty and republicanism.'' The writ

has since been described as ''the most important human right in the Constitution.

Today habeas is typically used by convicted prisoners to collaterally attack their criminal sentences. At its historical core, however, the writ provides a check against executive detention without trial, and it is in this context that its protections have always been strongest. Above all, habeas guarantees that no individual will be imprisoned without the most basic requirement of due process—a meaningful opportunity to demonstrate his innocence before a neutral decisionmaker.

Habeas corpus was part of colonial law from the establishment of the American colonies, and the common law writ operated in all thirteen British colonies that rebelled in 1776. The Framers enshrined habeas corpus in the Suspension Clause of the Constitution, which states that Congress ''shall not'' suspend the writ of habeas corpus ''unless when in Cases of Rebellion or Invasion the public Safety may require it.'' The First Congress codified this constitutional command in the Judiciary Act of 1789, making the writ available to any individual held by the United States who challenges the lawfulness of his detention. For the Framers of the Constitution, restricting Congress's power to suspend habeas corpus was never controversial: the only debate concerned what conditions, if any, could ever justify suspension of the Great Writ, and the Framers concluded that Congress could exercise its suspension power only under the most exceptional circumstances. The constitutional guarantee of habeas corpus stands apart and perpetually independent from the other guarantees of the Bill of Rights enacted two years later in 1791.

Under the influence, if not the command of the Suspension Clause, Congress has always felt itself obligated to provide for the writ in the most ample manner. Since the Nation's founding, the writ has been suspended on only four occasions: during the middle of the Civil War in the United States; during an armed rebellion in several southern States after the Civil War; during an armed rebellion in the Philippines in the early 1990s; and in Hawaii immediately after the attack on Pearl Harbor. Each suspension was not only a response to an ongoing, present emergency, but was limited in duration to the active rebellion or invasion that necessitated it.

II. HABEAS CORPUS EXTENDS TO ANY TERRITORY WITHIN THE GOVERNMENT'S EXCLUSIVE JURISDICTION AND CONTROL AND GUARANTEES A SEARCHING INQUIRY INTO THE FACTUAL AND LEGAL BASIS FOR A PRISONER'S DETENTION

As the Supreme Court has recognized, the writ of habeas corpus has an '' 'extraordinary territorial ambit.' '' Habeas has always reached any territory over which the government exercised sufficient power and control to compel obedience to the writ's command. As Lord Mansfield wrote in 1759, ''even if a territory was 'no part of the realm [of England],' there was 'no doubt' as to the court's power to issue writs of habeas corpus if the territory was 'under the subjection of the Crown.' '' At common law, therefore, habeas was available not only in territories beyond the borders of England, such as the mainland American colonies and West Indies, but also in territory over which England exercised exclusive control and jurisdiction but lacked sovereignty.

The right to habeas corpus has always extended to aliens as well as citizens. The writ has been available in time of peace as well as in time of war. Even alleged enemy aliens have had access to habeas to demonstrate their innocence, including by submitting evidence to a court. Indeed, in one case Chief Justice Marshall, on circuit, required an enemy alien to be produced in court and ordered his release. As the Supreme Court observed in Rasul v. Bush, detainees at Guantánamo have the right to habeas review because they are imprisoned in territory over which the United States has complete jurisdiction and control and because, unlike the World War II-era prisoners in Johnson v. Eisentrager, they have never been convicted of any crime and maintain their innocence.

Common law courts did not simply accept the government's factual response to a prisoner's habeas petition; instead, they routinely probed that response and examined additional evidence submitted by both sides to ensure the factual and legal sufficiency of a person's confinement. The writ's guarantee of a searching judicial inquiry crystallized in response to the Crown's efforts to detain individuals indefinitely without due process. In 1592, English judges protested that when they ordered the release of individuals unlawfully imprisoned by the Crown, executive officials transported them to ''secret [prisons]'' to place them beyond judicial review. As a result, the judges issued a resolution affirming their power to release prisoners if a response to the writ was not made.

The Crown, nevertheless, continued to avoid a judicial examination into a prisoner's detention by providing a general response (or return) that did not specify the cause of commitment. This issue came to a head in the seminal Darnel's Case. There, the Attorney General asserted that it was the king's prerogative to detain suspected enemies of State by his ''special command,'' without a judicial inquiry into the factual and legal basis for their detention. He emphasized the Crown's overriding interest in national security and insisted that judges defer to the king's judgment.

When the court upheld the Crown by finding its response sufficient, it sparked a constitutional crisis that led to the establishment of habeas corpus as the pre-eminent safeguard of common law due process and personal liberty. This was entrenched through the enactment of the Petition of Right or 1628, the Habeas Corpus Act of 1641, and the Habeas Corpus Act of 1679. By the late 1600s habeas corpus had become—and would remain—''the great and efficacious writ, in all manner of illegal confinement'' and the most ''effective remedy for executive detention.''

At common law, courts consistently engaged in searching review on habeas corpus to probe the factual and legal basis for a prisoners commitment, including by conducting hearings and taking evidence. In the United States, courts have exercised the same searching review of executive detention. Indeed, in one its first habeas cases, the Supreme Court affirmed the writ's historic function at common law; to determine whether there was an adequate factual and legal basis for the commitment,'' fully examining and considering the evidence and finding it insufficient to justify the prisoners' detention on allegations of treason.

Habeas also has always guaranteed review of the lawfulness of a newfangled tribunal established to try individuals before that trial takes place. This review has been exercised in time of war and in time of peace, and over all categories of alleged offenders. To deny that review would jeopardize a longstanding protection of habeas.

By contrast, habeas review has always been more limited in post-conviction cases—which today make up the bread and butter of a federal court's habeas docket. But that is precisely because the prisoner had already been convicted at a trial that provided fundamental due process, including the opportunity to see the government's evidence and to confront and cross-examine its witnesses, a right that Justice Scalia has said is ''founded on natural justice,'' Absent that process, a federal judge with jurisdiction over a habeas corpus petition has the power to examine the factual and legal basis for the prisoner's detention in the first instance, including the power to take evidence and conduct a hearing, where appropriate. At issue in the Guantanamo habeas cases is executive detention without any judicial process—precisely the situation that lies at the Great Writ's core and that mandates a searching examination of the government's allegations.

III. HABEAS CORPUS SERVES AS AN ESSENTIAL CHECK ON THE USE OF EVIDENCE GAINED BY TORTURE.

Habeas corpus also vindicates another core guarantee of the common law—the categorical prohibition on the use of evidence obtained by torture. During the sixteenth century, crown officials occasionally issued warrants authorizing the torture of prisoners. Pain was inflicted by a variety of ingenious devices, including thumbscrew, pincers, and the infamous rack. The use of torture declined after an investigation showed that a suspected traitor had been ''tortured upon the rack'' based upon false allegations. Shortly thereafter the king asked the common law judges whether another alleged traitor ''might not be racked'' to make him identify accomplices, and ''whether there were any law against it.'' The judges' answer was unanimous: the prisoner could not be tortured because ''no such punishment is known or allowed by our law.''

The Framers of the Constitution also abhorred torture, which they viewed as a mechanism of royal despotism. As the Supreme Court has repeatedly held, reliance on evidence obtained by torture is forbidden not merely because it is inherently unreliable but also because such ''interrogation techniques [are] offensive to a civilized system of justice.'' Without the availability of habeas corpus to provide a searching inquiry into the basis for a prisoner's detention, and to determine whether, in fact, evidence justifying that detention has been obtained by torture or other coercive methods, this fundamental common law protection would be jeopardized.

IV. THE PROPOSED LEGISLATION WOULD VIOLATE THE SUSPENSION CLAUSE

The proposed legislation would markedly depart from historical precedent and the Constitution's command that the writ be made available. This legislation, moreover, would sweep under the jurisdictional bar only non-citizens, raising serious questions under the Constitution's guarantee of equal protection as well.

The Committee may ask whether review by the District of Columbia Circuit established under the Detainee Treatment Act of 2005 (''DTA'') obviates any problem under the Constitution. It does not. Such review falls far short of the minimum review guaranteed under the Suspension Clause because it would deny prisoners any meaningful inquiry into the factual and legal basis for their detention and would sanction the use of evidence secured by torture and other coercion. Since others have explained the flaws of this review scheme in greater detail, I describe them below only briefly.

The Guantánamo detainees are all held pursuant to a finding by the Combatant Status Review Tribunal (''CSRT'') that they are ''enemy combatants.'' The CSRT was established by the President only nine days after the Supreme Court's ruling in Rasul that Guantánamo detainees have the right to challenge their executive detention in federal district court by habeas corpus. The order creating the CSRT pre-judged the detainees, declaring that they had already been

found to be enemy combatants based on multiple levels of internal review. Rather than affording the detainees a meaningful opportunity to prove their innocence, the CSRT denied them fundamental rights, including the right to counsel; the right to see the evidence against them; and the right to a neutral decisionmaker. Moreover, as the government itself acknowledges, the CSRT permits the use of evidence gained by torture. In short, as District Judge Joyce Hens Green found, the CSRT denies the core protections of elementary due process that habeas provides: a searching factual inquiry to determine whether a prisoner's detention is unlawful1, including whether it is based on evidence secured by torture.

Review of CSRT determinations under the DTA would not provide detainees with any opportunity to challenge the factual and legal basis for their detention. The DTA, on its face, limits review to whether the CSRT followed its own procedures. No detainee, as the government argues, can ever present evidence to a federal court even if that evidence shows he is innocent or that he was tortured. In short, DTA review of a CSRT finding would deny prisoners precisely the meaningful factual inquiry provided by habeas corpus and secured under the Suspension Clause.

V. CONCLUSION

Habeas corpus has aptly been described as ''the water of life to revive from the death of imprisonment.'' For centuries, the Great Writ has prevented the Executive from imprisoning individuals based upon mere suspicion and without a meaningful examination of its allegations. Habeas corpus demands that individuals have a fair opportunity to demonstrate their innocence before a neutral decisionmaker. Eliminating habeas at Guantanamo would flout this long tradition and would gut the core protections guaranteed under the Suspension Clause.

Thank you for the opportunity to provide this statement. My colleagues and I are happy to provide the Committee with any further information.

JONATHAN HAFETZ,
New York, NY, September 25, 2006

Mr. Speaker, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself 1 minute.

Mr. Speaker, let me just point out what the people on the other side, if they have their way, are going to have as a result.

I just want to quote one of the coordinating counsels for the detainees, a gentleman named Michael Ratner, who boasted about what they are planning on doing in public. ''The litigation is brutal for the United States. It is huge. We have over 100 lawyers now from big and small firms working to represent the detainees. Every time an attorney goes down there, it makes it much harder for the U.S. military to do what they are doing. You can't run an interrogation with attorneys. What they are going to do now is that we are getting court orders to get more lawyers down there.''

Now, to put some order in this and to defeat what Mr. Ratner said, the legislation has got to pass.

Mr. Speaker, I yield 5 minutes to the gentleman from California (Mr. DANIEL E. LUNGREN).

Mr. DANIEL E. LUNGREN of California. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, there has been some discussion by some on the other side to suggest that somehow this bill that we bring before us is unconstitutional, that it grants powers to the President that are somehow unconstitutional.

Let me just read from the concurring opinion of Justice Breyer in the Hamdan case when he basically said that their decision rested upon a single ground, that Congress had not issued the executive a blank check, that the President had to go back to us to get authority for this. Then they go ahead and say nothing prevents the President from returning to Congress to seek the authority he believes necessary.

The President believes this authority is necessary. We have worked with him in both the House and the Senate, two different committees on the House side, to try and give him the authority he believes necessary, in the words of Justice Breyer.

We need to be clear on some things concerning the language of section 7 of this bill. This action is necessary because, in Rasul, the United States Supreme Court interpreted the Federal habeas corpus statutory scheme as allowing those detained in Guantanamo Federal petitions for relief in the Federal courts. The decision was, to say at the least, a major departure from historical precedent. However, this is important. Since the decision was based solely on an interpretation of a statute, 28 U.S.C. 2241, it was easily correctable by congressional action.

That is exactly what we did with the Senate with the enactment last year of the Detainee Treatment Act. This statute replaced statutory habeas review with a process of administrative review in which it ultimately would be subject to review by the United States Circuit Court of Appeals for the District of Columbia Circuit.

□ 1515

So we are not changing the scheme, the statutory scheme of habeas corpus. This Congress already did it a year ago. What we are dealing with is the Hamdan case, another case of statutory interpretation in which the court failed to apply the Detainee Treatment Act to cases which were then pending as of the date of the enactment. Thus, we are here once again to clarify what we have already determined to be the law. In short, section 7 of our bill informs the court that this time we really mean it.

For us to do anything other than to affirm the Detainee Treatment Act would indeed be a dramatic departure from what has been deeply rooted in our Nation's legal tradition. Contrary to what has been said on the other side, the United States Supreme Court recognized the 1950 case of Johnson v. Eisenstrager that there is, and this is the Supreme Court speaking, ''no instance where a court in this or any other country where the writ is known issued it on behalf of an alien enemy.''

So we are not changing the law, we are not being inconsistent with the court, we are not being unconstitutional. What we are doing is precisely in the mainstream of what the Court has said.

Furthermore, this raises an additional question which must be clarified. The debate today relates to the interpretation of a statute and has absolutely nothing to do with what is referred to as the other writ. The other side keeps talking about this has been in our existence for hundreds of years. They speak of it as being part of the Constitution. Folks, that is the great writ, capital G, capital W. This is the statutory writ. Two different things. Two different things. We have to understand that. In both the Rasul and Hamdan, the question relating to the Detainee Treatment Act was one of statutory interpretation. The Supreme Court did not refer to the great writ; they referred to the statutes. The statutory habeas framework found in title 28 is a creature of Congress. In fact, in Ex Parte McCardle, the United States Supreme Court upheld congressional limitations on the scope of judicial review concerning the habeas statute.

What Congress creates, it can also limit. Even professor Erwin Chemerinsky, with whom I seldom agree, points out in his treatise on Federal Jurisdiction that, following the Civil War, congressional statutes rather than the constitutional provision are the source of rights relating to habeas corpus.

At the same time, as has been pointed out but needs to be pointed out again, this bill goes to great lengths to ensure detainees will receive full and fair consideration of their claims. The bill allows the respected article 3 court, the U.S. Court of Appeals for the D.C. Circuit, to review two key government decisions: one, a combatant status review tribunal's determination that a detainee is an enemy combatant; and, two, any final decisions by the military commissions authorized by this bill. This is ample protection when compared with the requirement of a review of status by a competent tribunal under article 5 of the Geneva Conventions.

In fact, this legislation before us would expand the eligibility of judicial review over that provided in current law. It would expand it, not contract it, not remain the same. It would actually expand it. I urge my colleagues to vote for this bill.

Mr. CONYERS. Mr. Speaker, before yielding to the gentlewoman from California, I would just like to respond to the comments that I have heard.

Never before has a President of the United States had the exclusive power to interpret the Geneva Conventions and publish what he has interpreted in the RECORD. And never before has a President had the power to eliminate judicial review of executive acts as significant as detention and domestic surveillance. And that can't be squared with the principles of transparency and the rule of law.

I would refer all of my colleagues to 62 professors of law, not lawyers, professors of law, who have explained why section 83 and section 6 are very problematic and are going to lead us right back into the court, because for 5 long years after the 9/11 tragedy, not a single detainee has been brought to justice because this administration insists on unilaterally pursuing secret, unconstitutional strategies that cannot pass judicial muster.

I yield 2 minutes to the gentlewoman from California (Ms. ZOE LOFGREN), member of the Judiciary Committee.

Ms. ZOE LOFGREN of California. Mr. Speaker, it was clear from the beginning that the executive branch lacked the authority to create courts without the Congress passing laws to provide for them, so it is important and proper that Congress create courts so that terrorist suspects can be swiftly tried, found guilty, and be punished. Unfortunately, this bill will not accomplish that.

Others have spoken well about the deficiencies in the definition of who may be incarcerated without charge forever, but I want to particularly object to the provisions suspending habeas corpus.

America is a proud free Nation because we are a Nation of laws, not men. Key to the rule of law is the brilliant system of checks and balances created by the Founding Fathers. This bill dumps the checks and balances by asserting that the courts cannot review the actions of the executive branch.

While poorly crafted rules are included in the bill, rules without remedies are not real rules. Not only is it unwise, it is mostly unconstitutional. And instead of allowing for swift prosecution and punishment, enactment of this bill into law will lead to years of further legal wrangling.

We all took an oath to defend and uphold the Constitution of the United States, and here is what article I, section 9 says: ''the privilege of the writ of habeas corpus shall not be suspended unless when in cases of rebellion or invasion the public safety may require it.''

Congress may not suspend the great writ of habeas corpus and limit the checks and balances whenever it wants to. Congress may do so only in cases of rebellion and invasion, neither of which is present today. Nine distinguished retired justices have written to bring this to our attention.

I include their letter for the RECORD.

TO MEMBERS OF CONGRESS: The undersigned retired federal judges write to express our deep concern about the lawfulness of Section 6 of the proposed Military Commissions Act of 2006 (''MCA''). The MCA threatens to strip the federal courts of jurisdiction to test the lawfulness of Executive detention at the Guantánamo Bay Naval Station and elsewhere outside the United States. Section 6 applies ''to all cases, without exception, pending on or after the date of the enactment of [the MCA] which relate to any aspect of the detention, treatment, or trial of an alien detained outside of the United States . . . since September 11, 2001.''

We applaud Congress for taking action establishing procedures to try individuals for war crimes and, in particular, Senator WARNER, Senator GRAHAM, and others for ensuring that those procedures prohibit the use of secret evidence and evidence gained by coercion. Revoking habeas corpus, however, creates the perverse incentive of allowing individuals to be detained indefinitely on that very basis by stripping the federal courts of their historic inquiry into the lawfulness of a prisoner's confinement.

More than two years ago, the United States Supreme Court ruled in Rasul v. Bush, 542 U.S. 466 (2004), that detainees at Guantánamo have the right to challenge their detention in federal court by habeas corpus. Last December, Congress passed the Detainee Treatment Act, eliminating jurisdiction over future habeas petitions filed by prisoners at Guantánamo, but expressly preserving existing jurisdiction over pending cases. In June, the Supreme Court affirmed in Hamdan v. Rumsfeld, 126 S. Ct. 2749 (2006), that the federal courts have the power to hear those pending cases. These cases should be heard by the federal courts for the reasons that follow.

The habeas petitions ask whether there is a sufficient factual and legal basis for a prisoner's detention. This inquiry is at once simple and momentous. Simple because it is an easy matter for judges to make this determination—federal judges have been doing this every day, in every courtroom in the country, since this Nation's founding. Momentous because it safeguards the most hallowed judicial role in our constitutional democracy—ensuring that no man is imprisoned unlawfully. Without habeas, federal courts will lose the power to conduct this inquiry.

We are told this legislation is important to the ineffable demands of national security, and that permitting the courts to play their traditional role will somehow undermine the military's effort in fighting terrorism. But this concern is simply misplaced. For decades, federal courts have successfully managed both civil and criminal cases involving classified and top secret information. Invariably, those cases were resolved fairly and expeditiously, without compromising the interests of this country. The habeas statute and rules provide federal judges ample tools for controlling and safeguarding the flow of information in court, and we are confident that Guantánamo detainee cases can be handled under existing procedures.

Furthermore, depriving the courts of habeas jurisdiction will jeopardize the Judiciary's ability to ensure that Executive detentions are not grounded on torture or other abuse. Senator John McCain and others have rightly insisted that the proposed military commissions established to try terror suspects of war crimes must not be permitted to rely on evidence secured by unlawful coercion. But stripping district courts of habeas jurisdiction would undermine this goal by permitting the Executive to detain without trial based on the same coerced evidence.

Finally, eliminating habeas jurisdiction would raise serious concerns under the Suspension Clause of the Constitution. The writ has been suspended only four times in our Nation's history, and never under circumstances like the present. Congress cannot suspend the writ at will, even during wartime, but only in ''Cases of Rebellion or Invasion [when] the public safety may require it.'' U.S. Const. art. I, §9, cl. 2. Congress would thus be skating on thin constitutional ice in depriving the federal courts of their power to hear the cases of Guantánamo detainees. At a minimum, Section 6 would guarantee that these cass would be mired in protracted litigation for years to come. If one goal of the provision is to bring these cases to a speedy conclusion, we can assure you from our considerable experience that eliminating habeas would be counterproductive.

For two hundred years, the federal judiciary has maintained Chief Justice Marshall's solemn admonition that ours is a government of laws, and not of men. The proposed legislation imperils this proud history by abandoning the Great Writ to the siren call of military necessity. We urge you to remove the provision stripping habeas jurisdiction from the proposed Military Commissions Act of 2006 and to reject any legislation that deprives the federal courts of habeas jurisdiction over pending Guantánamo detainee cases.

Respectfully,

Judge John J. Gibbons, U.S. Court of Appeals for the Third Circuit (1969–1987), Chief Judge of the U.S. Court of Appeals for the Third Circuit (1987–1990).

Judge Shirley M. Hufstedler, U.S. Court of Appeals for the Ninth Circuit (1968–1979).

Judge Nathaniel R. Jones, U.S. Court of Appeals for the Sixth Circuit (1979–2002).

Judge Timothy K. Lewis, U.S. District Court, Western District of Pennsylvania (1991–1992), U.S. Court of Appeals for the Third Circuit (1992–1999).

Judge William A. Norris, U.S. Court of Appeals for the Ninth Circuit (1980–1997).

Judge George C. Pratt, U.S. District Court, Eastern District of New York (1976–1982), U.S. Court of Appeals for the Second Circuit (1982–1995).

Judge H. Lee Sarokin, U.S. District Court for the District of New Jersey (1979–1994), U.S. Court of Appeals for the Third Circuit (1994–1996).

William S. Sessions, U.S. District Court, Western District of Texas (1974–1980), Chief Judge of the U.S. District Court, Western District of Texas (1980–1987).

Judge Patricia M. Wald, U.S. Court of Appeals for District of Columbia Circuit (1979–1999), Chief Judge of the U.S. Court of Appea]s for District of Columbia Circuit (1986–1991).

We should be pulling together as a country to track down these terrorists and bring them to justice instead of facing this unconstitutional and divisive measure that was brought before us as part of a political agenda with an eye on the midterm elections, instead of a bill that would unify us as part of an American agenda with an eye to the continued greatness and security of our country.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself 30 seconds.

Mr. Speaker, I am afraid that my friends on the other side of the aisle aren't listening. There are two types of habeas corpus: one is the constitutional great writ. We are not talking about that here. We can't suspend that. That is in the Constitution, and we can't suspend that by law.

The other is statutory habeas corpus, which has been redefined time and time again by the Congress. That is what we are talking about here, and we have the constitutional power to redefine it.

I yield 4 minutes to the gentleman from Iowa (Mr. KING).

Mr. KING of Iowa. Mr. Speaker, I thank the chairman for 6 powerful years leading the Judiciary Committee.

The Supreme Court created a mess and hurt the Global War on Terror with its unnecessary and unconstitutional opinion in the Hamdan case. The Supreme Court had no authority to hear the Hamdan case. The Detainee Treatment Act gave the Court of Appeals for the District of Columbia Circuit exclusive jurisdiction over the validity of any final decision of an enemy combatant status review tribunal. The Supreme Court in Hamdan v. Rumsfeld ignored the provision of the DTA and a longstanding line of its own precedents which stood for the principle that Congress can limit jurisdiction in pending as well as future cases.

The DTA provided that: no court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the Department of Defense at Guantanamo Bay.

The plain language of this statute clearly applies to cases pending at the date of enactment. The Supreme Court should have reached this conclusion, relying on their own precedent, but they failed to do so. In response, this legislation, H.R. 6166, has been carefully drafted so that the Court can fully understand that it applies to both pending and later filed cases. It was not necessary for Congress to be so specific, but in order that the Court will not make the same mistake twice, Congress has carefully chosen the language ''pending on or filed after the date of enactment'' in section 5 of this legislation.

In his dissent in Hamdan v. Rumsfeld, Justice Scalia reminded the majority that they failed to cite a single case where such a jurisdiction limitation provision was denied immediate effect in pending cases. I agree with his opinion that the cases granting such immediate effect are legion.

The Court's opinion has had yet another fatal flaw. In order to apply the Geneva Conventions, the Court decided on its own that the Global War on Terror was not of international character. I cannot imagine that even the majority on the Court believed their own opinion. The Global War on Terror can in no way be characterized as a mere civil war. It is a war between Western Civilization and militant Islamic fascists from all around the world. It does not take place only in legislation.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. SIMPSON). The Chair notes a disturbance in the gallery in violation of the rules of the House and directs the Sergeant at Arms to restore order.

The Chair recognizes the gentleman from Iowa.

Mr. KING of Iowa. It is a war between Western Civilization and militant Islamic fascists from all around the Muslim world. It does not take place only in one nation. Global is international.

The Court decided the conclusion they desired and then shoehorned their decision to fit a preferred result, substituting their judgment for the constitutional judgment of Congress and of our Commander in Chief. And that was during a time of war. By doing this, the Supreme Court's majority in Hamdan further undermined our Constitution which relies on the separation of powers.

The unconstitutional intervention by the Supreme Court in Hamdan could have been handled by Congress and the President in another way. Under article III, section 2, Congress could have reasserted our clearly defined authority to limit the jurisdiction of the Supreme Court and to grant jurisdiction to any inferior court of our choosing, as expressed in the very plain language of the Detainee Treatment Act.

If we had not been a Nation at war, a Nation urgently concerned about protecting our citizens from attack, Congress may well have advised the Court of their unconstitutional intervention and the Court's obstruction of the ability of the Commander in Chief to protect America from our enemies and ignored the Court's decision. The necessities of war won out over the separation of powers, and for the first time the Supreme Court has engaged in setting parameters in war fighting beyond our national borders.

Because of our national security, Congress and the President jumped through a series of hoops set by the Court, rather than carry on a protracted power struggle over the Constitution with the Court. But, Mr. Speaker, Congress concedes no power to the Court not defined in the Constitution or specified by statute.

Mr. CONYERS. Mr. Speaker, I now yield 2½ minutes to the gentleman from Virginia, a member of the Judiciary Committee, Mr. SCOTT.

Mr. SCOTT of Virginia. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, while I support the efforts to establish a system of military commissions as required by the Supreme Court's decision in the Hamdan case, I am disappointed that a bill of this magnitude is being considered under a closed rule and without assurances that traditional notions of due process, judicial independence, and full compliance with the Geneva Conventions will be in the bill.

One of the most egregious problems of this bill is the creation of a presumption in favor of admitting coerced evidence, along with the continued insistence that a person can be fairly convicted using secret evidence. Another problem with the bill is it strips jurisdictions of civil courts from hearing cases involving plaintiffs who seek redress for violations of the torture provisions of the Geneva Conventions. This bill actually retroactively applies new standards. Now, whether this review of the habeas corpus as statutory or constitutional, it is a good idea; and it is the only way anybody can get a hearing on whether or not they have been tortured by the United States.

Moreover, the only automatic right of appeal would be to an entirely new appellate court of military commission review, with all of the judges appointed by and in the chain of command of the Secretary of Defense. In addition, the Secretary of Defense would be granted wide latitude to depart without judicial scrutiny from the rules and detainee protections the legislation purports to create. It would allow him to do so whenever he deems it practicable or consistent with military or intelligence activities. In an extraordinary move, the bill would retroactively limit the scope of U.S. obligations under common article 3 more than half a century after the United States ratified the Geneva Conventions, and it immunizes all previous violations of the War Crimes Act and other laws against torture and inhumane treatment of detainees in our custody.

This retroactive provision grants immunity to government officials and civilians, such as CIA operatives, interrogators, or those who may have authorized, ordered, or even participated in illegal acts of torture or abuse.

□ 1530

Mr. Speaker, this is a complex bill, and it is before us on a take-it-or-leave-it basis, with no amendments. We should take the time to consider all of these new provisions deliberately to ensure that the legislation does not undermine the United States' commitment to the rule of law, the success of its fight against terrorism, and, most of all, the safety of our United States' servicemen and women.

I urge my colleagues to defeat the passage of H.R. 6166.

Mr. CONYERS. Mr. Speaker, I am proud to yield to the gentleman from California (Mr. SCHIFF), who has worked diligently on this issue, 2 minutes.

Mr. SCHIFF. Mr. Speaker, I want to try to resolve an issue which has been debated here this afternoon about what the effect of this legislation is on American citizens.

Plainly, the legislation defines ''unlawful enemy combatant'' as any person who materially supports someone or is believed to support someone engaged in hostilities against the United States. That includes American citizens. And yet the majority says, but, under the legislation, only aliens can be brought up before the military tribunal. That is also correct. So how do you resolve this apparent difference?

The reality is there is no difference. Because what the bill contemplates is a two-part system of justice: one for those who are brought before tribunals, and one for those who may never be brought before tribunals but who are, nonetheless, detained as unlawful enemy combatants. Because this bill contemplates that people will be detained, whether it is in a secret CIA prison or elsewhere, and perhaps never brought before a tribunal; and there is nothing in this legislation that prohibits the detention of an American indefinitely, never brought before a tribunal.

Now the majority says, we don't do away with the habeas rights of Americans, writ large or writ small. If that is the case, why don't we say that in this legislation, that an American detained as an unlawful enemy combatant has the right of habeas corpus? The reason we don't say it in this bill is because the administration has consistently taken the position that those detained, including Americans, as unlawful enemy combatants do not have the right of habeas corpus to seek redress in courts and have fought that already in court.

So where does that leave us in the war of ideas? We have an enemy that has nothing to offer in the war of ideas. We have everything to offer. But when we undermine the idea of what it is to be an American, the idea of this country, by saying that we will water down the rule of law, that we will have a separate system of justice or no system of justice, for those who are declared unlawful combatants will have no right to court redress, that is a setback in the war of ideas.

Mr. CONYERS. Mr. Speaker, I am pleased to yield to the gentleman from New York (Mr. NADLER), a distinguished member of the Committee on the Judiciary, 2 minutes.

Mr. NADLER. Mr. Speaker, this is how a Nation loses its moral compass, its identity, its values and, ultimately, its freedom to fear.

It is ironic that the people who use the word ''freedom'' with reckless abandon, in everything from fries to a global vision, should come before the American people advocating the suspension of habeas corpus, secret star chamber tribunals, unlimited detention without review, and, yes, torture.

Yes, we must be vigilant to protect our safety. But we must not allow the honor and values of our Nation to be permanently stained by this detestable legislation. It is beneath us. It is not what we stand for.

There are many infamies in this bill, as others have pointed out. I will concentrate on just one.

This bill would allow the President, or any future President, to grab someone off a street corner in the United States, or anywhere else in the world, and hold them forever without any court review, without having to charge them, without ever having to justify their imprisonment to anyone.

This bill is flatly unconstitutional, for it repeals the great writ, habeas corpus; not, Mr. SENSENBRENNER, a statutory writ, the statutory great writ.

Turn to page 93, ''No court, justice, or judge shall have jurisdiction to hear or consider an application for writ of habeas corpus filed by or on behalf of an alien detained by the United States who has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.''

''Awaiting such determination''? That says it all. Nowhere in this new law is there any time limit for making this determination. In fact, it could be never.

We are told that these procedures are only for those the President has called ''the worst of the worst.'' How do we know they are the worst of the worst? Because the President says so. And the President and Federal bureaucrats, as we all know, never make mistakes.

Some people held as unlawful enemy combatants may be put before a military tribunal, but they need not be. They can be held forever without a hearing, without a military tribunal.

So let's review. The government can snatch anyone who is not a U.S. citizens anywhere in the world, including on the streets of this city, whether or not they are actually doing anything, and detain them in jail forever, out of reach of our Constitution, our laws or our courts.

We rebelled against King George, III, for far less infringements on liberty than this 200 years ago, but we seem to have forgotten. This bill makes the President a dictator for when someone can order people jailed forever without being subject to any judicial review. That is dictatorial power. The President wants to exist in a law-free zone. He does not want to be bound by the law of war or our treaty obligations. He does not want to answer to the Constitution, to the Congress or to the courts.

Mr. Speaker, rarely in the life of a Nation is the question so stark: Are we going to rush this complete repudiation of what we stand for through the Congress? I hope we are better than that.

Mr. CONYERS. Mr. Speaker, I yield to the gentleman from Maryland (Mr. VAN HOLLEN), an excellent member of the Committee on the Judiciary, 2 minutes.

Mr. VAN HOLLEN. Mr. Speaker, we now know what the administration wanted to hide from the American people: that the consensus view of all 16 intelligence agencies is that the Iraq war has made the overall terrorism problem worse, not better; that it has fueled the jihadist movement and made us less safe, and not more safe.

The Bush administration was wrong about weapons of mass destruction. They were wrong about alleged collaboration between al Qaeda and Saddam Hussein, and they are wrong about this bill.

This bill will weaken, not strengthen, our national security. They are wrong because this bill will place our troops in Iraq and elsewhere around the world in greater danger of torture, both today and in future conflicts. They are wrong because this bill will further erode our already tarnished credibility and moral standing around the world.

Let us always remember that our strength flows not only from the force of our military but from the power of our example. And they are wrong because we have learned the hard way that information extracted through torture and extreme coercion can be unreliable.

Remember when Secretary Powell at the United Nations told the world that Saddam Hussein had mobile bioweapons labs? That information came from a person that we turned over to Egypt who was tortured, and the CIA has since acknowledged that information was false, and yet that was important information that was used as part of our argument to go to war in Iraq.

This is a defining moment for our Congress and our country. It will define who we are as a people and what we stand for, and yet it gives the President too much of a blank check to unilaterally decide that answer for all of us. It gives the President the authority to unilaterally define what constitutes specific acts of torture. It gives the President the authority to unilaterally decide who can be detained as an enemy combatant, including American citizens, and, therefore, send them into a legal limbo.

Mr. Speaker, when we take very important decisions in the name of the American people, we better get it right. This bill gets it wrong.

Mr. CONYERS. Mr. Speaker, I include for the RECORD a letter dated September 27 from the American Civil Liberties Union and 41 other organizations.

SEPTEMBER 27, 2006.

DEAR REPRESENTATIVE: We are writing to strongly encourage you to reject the ''compromise'' Military Commissions Act of 2006 and to vote no on final passage of the bill. More than anything else, the bill compromises America's commitment to fairness and the rule of law.

For the last five years the United States has repeatedly operated in a manner that betrays our Nation's commitment to law. The U.S. has held prisoners in secret prisons without any due process or even access to the Red Cross and has placed other prisoners in Guantanamo Bay in a transparent effort to avoid judicial oversight and the application of U.S. treaty obligations. The Federal government has operated under legal theories which dozens of former senior officers have warned endanger U.S. personnel in the field and has produced legal interpretations of the meaning of ''torture'' and ''cruel, inhuman and degrading'' treatment which had to be abandoned when revealed to the public. Interrogation practices were approved by the Department of Defense which former Bush Administration appointee and General Counsel of the Navy Alberto Mora described as ''clearly abusive, and . . . clearly contrary to everything we were ever taught about American values.'' According to media reports the CIA has used a variety of interrogation techniques which the United States has previously prosecuted as war crimes and routinely denounces as torture when they are used by other governments.

Instead of finally coming to grips with this situation and creating a framework for detaining, interrogating and prosecuting alleged terrorists which comports with the best traditions of American justice, the proposed legislation will mostly perpetuate the current problems. Worse, it would seek to eliminate any accountability for violations of the law in the past and prevent future judicial oversight. While we appreciate the efforts various members of Congress have made to address these problems, the ''compromise'' falls far short of an acceptable outcome.

The serious problems with this legislation are many and this letter will not attempt to catalogue them all. Indeed, because the legislation has only just been made available, many of the serious flaws in this long, complex bill are only now coming to light. For instance, the bill contains a new, very expansive definition of enemy combatant. This definition violates traditional understandings of the laws of war and runs directly counter to President Bush's pledge to develop a common understanding of such issues with U.S. allies. Because the proposed definition of combatant is so broad, the language may also have potential consequences for U.S. civilians. For instance, it may mean that adversaries of the United States will use the definition to define civilian employees and contractors providing support to U.S. combat forces, such as providing food, to be ''combatants'' and therefore legitimate subjects for attack. Yet, there has been no opportunity to consider and debate the implications of this definition, or other parts of the bill such as the definitions of rape and sexual abuse.

We strongly oppose the provisions in the bill that strip individuals who are detained by the United States of the ability to challenge the factual and legal basis of their detention. Habeas corpus is necessary to avoid wrongful deprivations of liberty and to ensure that executive detentions are not grounded in torture or other abuse.

We are deeply concerned that many provisions in the bill will cast serious doubt on the fairness of the military commission proceedings and undermine the credibility of the convictions as a result. For instance, we are deeply concerned about the provisions that permit the use of evidence obtained through coercion. Provisions in the bill which purport to permit a defendant to see all of the evidence against him also appear to contain serious flaws.

We believe that any good faith interpretation of the definitions of ''cruel, inhuman and degrading'' treatment in the bill would prohibit abusive interrogation techniques such as waterboarding, hypothermia, prolonged sleep deprivation, stress positions, assaults, threats and other similar techniques because they clearly cause serious mental and physical suffering. However, given the history of the last few years we also believe that the Congress must take additional steps to remove any chance that the provisions of the bill could be exploited to justify using these and similar techniques in the future.

Again, this letter is not an attempt to catalogue all of the flaws in the legislation. There is no reason why this legislation needs to be rushed to passage. In particular, there is no substantive reason why this legislation should be packaged together with legislation unrelated to military commissions or interrogation in an effort to rush the bill through the Congress. Trials of the alleged ''high value'' detainees are reportedly years away from beginning. We urge the Congress to take more time to consider the implications of this legislation for the safety of American personnel, for U.S. efforts to build strong alliances in the effort to defeat terrorists and for the traditional U.S. commitment to the rule of law. Unless these serious problems are corrected, we urge you to vote no.

Sincerely,

Physicians for Human Rights.
Center for National Security Studies.
Amnesty International USA.
Human Rights Watch.
Human Rights First.
American Civil Liberties Union.
Open Society Policy Center.
Center for American Progress Action Fund.
The Episcopal Church.
Jewish Council for Public Affairs.
National Religious Campaign Against Torture.
Presbyterian Church (USA), Washington Office.
Friends Committee on Nat'l Legislation.
Maine Council of Churches.
Pennsylvania Council of Churches.
Wisconsin Council of Churches.
Brennan Center for Justice at NYU Law School.
Center for Constitutional Rights.
Robert F. Kennedy Memorial Center for Human Rights.
The Bill of Rights Defense Committee.
Unitarian Universalist Service Committee.
Leadership Conference of Women Religious.
Center for Human Rights and Global Justice, NYU School of Law.
The Shalom Center.
Washington Region Religious Campaign Against Torture.
The Center for Justice and Accountability.
Center of Concern.
Justice, Peace & Integrity of Creation Missionary Oblates.
Rabbis for Human Rights—North America.
Humanist Chaplaincy at Harvard University.
No2Torture.
Maryland Christians for Justice and Peace.
American Library Association.
Churches Center for Theology and Public Policy.
Disciples Justice Action Network (Disciples of Christ).
Equal Partners in Faith.
Christians for Justice Action (United Church of Christ).
Reclaiming the Prophetic Voice.
Baptist Peace Fellowship of North America.
Pax Christi USA: National Catholic Peace Movement.
Fellowship of Reconciliation.
Maryknoll Office for Global Concerns.

Mr. Speaker, I turn now to the gentleman from Massachusetts (Mr. FRANK), a former member of the committee, 1 minute.

Mr. FRANK of Massachusetts. Mr. Speaker, I understand the lack of compassion for terrorists. I share much of it. But this is not about terrorists. This is about people accused of terrorism. And there may be human realms where infallibility is a valid concept, not in the arresting of people and certainly not when this is done in the fog of war.

Have we not had enough examples of error, of people like the recent case, to our embarrassment, of a man sent to Syria to be tortured by the United States wrongly; of Captain Yee; of Mr. Mayfield in Oregon?

Have we not had enough examples of error to understand that you need to give people accused of this terrible crime a way to prove that the accusations were not true? That is what is at risk here.

I believe that the law enforcement people of America and the Armed Forces of America are the good guys. But they are not the perfect guys. They are not people who don't make mistakes, particularly acting as they do under stress.

It is a terrible thing to contemplate that this bill will allow people to be locked up indefinitely with no chance to prove that they were locked up in error. We should not do it.

Mr. CONYERS. Mr. Speaker, I yield myself the balance of my time.

The last reason for the many that have been brought forward as to why this legislation is dangerous and unwise is that it endangers our troops because it has the effect of lowering the standards set forth in the Geneva Conventions. By allowing the President to unilaterally interpret the Geneva Conventions and then exempting his interpretations from any scrutiny, we are creating a massive loophole to this time-honored treaty and endangering our own troops.

As the head of Army intelligence, Lieutenant General Kimmons warned us, no good intelligence is going to come from abusive practices. I think history tells us that. And if you don't believe him, just ask Maher Arar, an innocent Canadian national, who was sent by our Nation, I am sorry to report, to Syria where he was tortured.

This legislation decimates separation of powers by retroactively cutting off habeas corpus. Let us not approve this legislation in the House of Representatives this evening.

Mr. Speaker, I yield back the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself 3 minutes, and I would like to make a couple of points.

First of all, this legislation has to be read in conjunction with the Detainee Treatment Act which was signed into law last year. That law provides for a procedure to review whether or not someone is properly detained as an enemy combatant. So the business of indefinite detention is a red herring.

Secondly, this legislation itself creates a number of new rights for detainees and people who are tried before military commissions. Let me enumerate them. There are 26 new rights:

A right to counsel provided by the government at trial and throughout appellate proceedings; an impartial judge; the presumption of innocence; standard of proof is beyond a reasonable doubt.

The right to be informed of the charges against the defendant as soon as practicable.

The right to service of charges sufficiently in advance of trial to prepare a defense.

The right to reasonable continuances.

The right to peremptorily challenge members of the commission. That is something nobody has in the United States against a Federal judge.

Witnesses must testify under oath and counsel, and members of the military commission must take an oath.

The right to enter a plea of not guilty.

The right to obtain witnesses and other evidence.

The right to exculpatory evidence as soon as practicable.

The right to be present in court, with the exception of certain classified evidence involving national security, preservation of safety or preventing disruption of proceedings.

The right to a public trial, except for national security or physical safety issues.

The right to have any finding or sentences announced as soon as determined.

The right against compulsory self-incrimination.

The right against double jeopardy.

The defense of lack of mental responsibility.

Voting by members of the military commission by secret written ballot.

Prohibition against unlawful command influence towards members of the commission, counsel, and military judgments.

Two-thirds vote of members is required for conviction, three-quarters is required for sentence to life or over 10 years, and unanimous verdict is required for the death penalty.

Verbatim authenticated record of trial.

Cruel and unusual punishment is prohibited.

Treatment and discipline during confinement the same as afforded to prisoners in U.S. domestic courts.

The right to review the full factual record by the convening authority, and the right to at least two appeals, including two in article 3 in Federal appellate court. That is one more appeal than the Constitution gives United States citizens.

□ 1545

So what's the beef? There are 26 more rights that are created in this legislation. Vote down the legislation, you vote down all of these new rights.

Mr. Speaker, at this time I yield the balance of my time to the gentleman from California (Mr. HUNTER) and ask unanimous consent that he be permitted to yield portions of that time as he sees fit.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

The SPEAKER pro tempore. The gentleman from California has 3½ minutes remaining.

Mr. HUNTER. Mr. Speaker, I yield myself 2½ minutes.

Mr. Speaker, I want to thank all my colleagues on both sides of this debate.

This great Nation, this shining city on a hill, was attacked on 9/11. We undertook aggressive action against the terrorists who attacked us. We killed a lot of them. We found them in places where they never thought we would find them, in caves at 10,000-foot elevation mountain ranges, in deserts, in cities, and we captured some of them. And some of those who designed the attack against the United States and New York and Pennsylvania and Washington have been captured. And they are now in Guantanamo or going to Guantanamo. And the Supreme Court of the United States has charged this body with building a system with which to prosecute these terrorists, and we are responding with that system.

Now, I would say to those who say that this is not fair, that we haven't given them enough rights, I think we have given them plenty. We have enumerated those. The chairman of the Judiciary Committee went over many basic rights. But the world is going to see these trials. And as I watch these defendants, these people, including those who designed the attack on 9/11, being presumed innocent; being given lawyers by the United States; being set against a standard of proof beyond a reasonable doubt; being protected against self-incrimination; being given the right to exculpatory evidence; being given the right to two appeals, not one appeal, as the minority had in the initial markup coming out of the Armed Services Committee, the American people will have an opportunity to see whether or not they think that the alleged terrorists have been given enough rights. So let's do what the Supreme Court asked us to do.

We have put together an excellent product. It is agreed on. It will be introduced shortly in the U.S. Senate. For those who say they want to see the product of Mr. WARNER and Mr. MCCAIN and Mr. GRAHAM, they have had a great deal of input into this, and they will be introducing this piece of legislation in the other body. So let's get on with this. It is our duty to pass this bill, to construct this system, construct this court, and bring justice before the eyes of the widows and orphans of 9/11, our fellow citizens, and the world. Let's do it.

Mr. Speaker, I yield the balance of my time to the majority leader, Mr. BOEHNER.

Mr. BOEHNER. Mr. Speaker, let me thank my colleague for yielding.

We all know that in the years since 9/11 we have been focused on one vital goal, and that is stopping terrorist attacks before they happen.

I want to commend Chairman HUNTER and Chairman SENSENBRENNER for their work on this piece of legislation. I think we all know that to stop terrorist attacks before they happen, we need to be able to interrogate terrorist suspects, find out what they know, and put them on trial.

After 9/11, President Bush vowed to devote his Presidency to protecting the American people, and he vowed to use every tool at his disposal under the law to fight the terrorists and attack them before they attack us.

If we are serious about stopping terrorist attacks before they happen, the ability to extract information from terrorist suspects and put them on trial is essential.

President Bush put together a system to accomplish these goals after 9/11. We have captured some of the world's most dangerous terrorists. But now our efforts are on hold because of a Supreme Court decision in June and that without congressional authorization, the Federal Government lacks the authority to use military tribunals for these suspected terrorists.

In the wake of this Court decision, Congress has a choice. We can do nothing and allow the terrorists in U.S. custody to go free or to go into a trial meant for American civilians; or we can authorize tribunals for terrorists, find out what they know, and bring them to justice.

This bill will allow us to continue to gather important intelligence information from foreign terrorists caught in battle or caught while plotting attacks on America. As President Bush has said, the information we have learned from captured terrorists ''has helped us to take potential mass murderers off the streets before they were able to kill us.''

We know these interrogations have provided invaluable intelligence information that has thwarted terrorist attacks and has saved American lives. This bill allows Congress to draw the parameters for detaining and bringing to justice terrorists like Khalid Sheikh Mohammed, the driving force behind the terrorist attacks of September 11. The bill will provide clear guidance for Americans who are interrogating the terrorist suspects on behalf of our country. It will preserve this crucial program while meeting our commitments and obligations under the Geneva Conventions. It will also help us meet a 9/11 Commission recommendation that America develop a common coalition approach toward the detention and humane treatment of captured terrorists.

We recognize military tribunals play a critical role in helping us fight the global war on terror, and we will give these tools to our President as he fights to help keep all of us safe.

But the real question today is, what will my colleagues, my Democrat colleagues, do when it comes to this vote today?

Virtually every time the President asks Congress for the tools he needs to stop terrorist attacks, a majority of my Democrat friends have said ''no.'' Democrats by and large voted ''no'' on establishing the Department of Homeland Security in July of 2002.

A majority of Democrats voted ''no'' on additional funds to respond to the attacks of September 11 and bolster homeland security efforts in May of 2002. The majority of the Democrats voted ''yes'' to deny funding for law enforcement to carry out provisions of the PATRIOT Act in July of 2004. And a majority of Democrats voted ''no'' on the REAL ID Act, which makes it difficult for terrorists to travel freely throughout the United States, in February of 2005. And Democrats voted ''no'' on reauthorizing the PATRIOT Act, and gloated about killing it, in December of 2005.

And more recently, many Democrats voted against a resolution condemning the illegal leaks of classified intelligence information that could impair our fight against terrorism. Democrats voted ''no'' in the Judiciary Committee against allowing the terrorist surveillance program to go forward. And the

Democrats in the Judiciary Committee voted ''no'' on this bill as well.

So the question is, will my Democrat friends work with Republicans to preserve this crucial program or oppose giving the President the tools that he needs to protect the American people? Will my Democrat friends work with Republicans to give the President the tools he needs to continue to stop terrorist attacks before they happen, or will they vote to force him to fight the terrorists with one arm tied behind his back?

Now, I do not, and will never, question the integrity or the patriotism of my colleagues on the other side of the aisle. This is about giving our President the tools he needs to wage war against terrorists who are trying to kill us. And I hope that we will stand together this week and vote to give our President the tools that we need to fight and win in our war against terrorists all over the world.

Mr. BLUMENAUER. Mr. Speaker, I am disappointed and perplexed that the administration and the Republican leadership refuse to provide meaningful legislation dealing with suspected terrorists and instead attempt to repeat the mistakes of the past. H.R. 6166, the Military Commissions Act, does nothing for our security and attempts to add legitimacy to the current improper actions of the Bush administration.

By not adhering to the strictest standards when putting suspected terrorists on trial, we run the risk of punishing innocent people who could simply have been in the wrong place at the wrong time. It is now widely known that potentially hundreds of inmates in Guantanamo Bay may in fact have had nothing to do with terrorism, If we accept this legislation to be the new law of the land, we will be skirting our moral responsibility to be vigorous in our pursuit of terrorists while remaining just in our cause,

This administration has repeatedly shown that it will make the wrong judgments and has repeatedly crossed the line while never acknowledging its own mistakes. Rather than stepping back to address the flaws that resulted in the Supreme Court's ''Hamdan vs, Rumsfeld'' decision, the administration and the Republican Majority continue to charge forward with more of the same. Congress can and must do better.

Mr. SHAYS. Mr. Speaker, although I have some reservations, I support this legislation and appreciate it being brought up for consideration.

On June 29, 2006, the Supreme Court ruled 5–3 in the case of Hamdan v. Rumsfeld that the Bush administration lacked the authority to take the ''extraordinary measure'' of scheduling special military trials for inmates, in which defendants have fewer legal protections than in civilian U.S. courts. Supreme Court Justice John Paul Stevens recommended Congress authorize a trial system closely based on our military's court-martial process. I am pleased that is what we are doing today.

It is a testament to our system of government that the highest court has given us guidance in properly administering justice to these terrorism suspects. We should bring detainees to trial with protections similar to military courts. This will guarantee the trials are honest, fair and impartial and that justice is done.

I recognize there are certain areas in which the tribunal system we are authorizing must deviate from a traditional court-martial and in my judgment this bill handles those differences in a fair and just manner.

On September 19, 2006, along with several of my Republican colleagues, I wrote to Majority Leader BOEHNER urging him to bring a bill to the floor that ensures the United States remains fully committed to the Geneva Convention. In our judgment, the bill considered by the Senate Armed Services Committee was a good bill, and I am grateful the bill before the House was modified to closely reflect the provisions in the Senate.

The legislation could have be more explicit in stating the so-called enhanced or harsh techniques that have been implemented in the past by the CIA may not be used under any U.S. law or order. The bill provides the President with some latitude to define what techniques may be used in accordance with the prohibition against cruel, inhuman and degrading treatment.

When I read the language in this bill—and specifically the definitions of cruel, inhumane and degrading treatment—I believe any reasonable person would conclude that all of those techniques would still be criminal offenses under the War Crimes Act because they clearly cause ''serious mental and physical suffering.''

I am also concerned about the bill's definition of rape, and of sexual assault or abuse under a section delineating what crimes may be prosecuted before military tribunals if committed by an enemy combatant or if committed by an American against a detainee. The narrow definition in this bill leaves out other acts, as well as the notion that sex without consent is also rape, as defined by numerous state laws and federal law.

For these reasons, I am voting for the Democrat Motion to Recommit the bill to require a reauthorization of this legislation and also to request expedited judicial review.

Mr. LEVIN. Mr. Speaker, I regret that once again the Republican Leadership has chosen to stampede far-reaching legislation through the House without adequate debate or any opportunity for Members to offer amendments. It has been 5 years since the 9/11 attacks, and it is only now that Congress is taking up legislation to try and punish terrorist suspects. The 96-page bill before the House was negotiated in secret last weekend and only introduced less than 48 hours ago. After waiting 5 years, can't we take even 5 days to consider a bill of this magnitude?

This Nation's security requires that terrorists must be caught, convicted and punished, and we need a process to do this. It is not clear to me how the proponents of this bill can claim that they are being tough on terrorists when it is almost certain that this legislation will not withstand constitutional scrutiny by the Supreme Court. The bill before the House bars detainees from filing habeas corpus suits challenging their detention. Under the bill, a person can be labeled an unlawful enemy combatant and detained indefinitely with no judicial view. This will not pass constitutional muster. Habeas corpus isn't about giving special rights to terrorists, as some have claimed; rather, it is about giving people who are accused of serious crimes an opportunity to disprove the charges against them.

I am also concerned that this legislation gives the President the authority to reinterpret the meaning and application of Common Article 3 of the Geneva Conventions. Especially given the well documented abuses of prisoners held at Abu Ghraib and Guantanamo Bay, we need to be clear that the United States will rigorously comply with its international obligations under the Geneva Conventions. This is important both to reinforce our Nation's moral standing in the world and to protect the men and women of our Armed Forces. If a U.S. soldier is held prisoner by another nation, we expect that they will enjoy the full protections of the Geneva Conventions, not some watered-down interpretation.

It is the job of Congress to pass legislation to try and punish terrorists. That legislation must protect our men and women in uniform from erosion of the Geneva Conventions, and the legislation must be tough, fair and able to withstand constitutional challenge. The bill before the House meets none of these standards, and I urge my colleagues to reject it. Rather than rush through such a fundamentally flawed bill, the House should remain in session and do the job right.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise in strong opposition to H.R. 6166, the Military Commissions Act of 2006. I oppose the bill because it creates an unfair trial system for military detainees, and does almost nothing to curb the President's power to authorize interrogation tactics that are widely recognized as torture.

Mr. Speaker, this so-called compromise bill, is actually nearly identical to what the administration has sought all along. The bill continues to allow secret evidence in trials, prohibits detainees from challenging the merits of their detention in courts, and effectively allows the President to authorize the CIA to continue inhumane detention and interrogation.

The Supreme Court ruled in the Hamdan v. Rumsfeld case that the President's system to try terrorist suspects is unlawful. All of us here and Americans everywhere want to see al Qaeda fighters tried and convicted for their crimes. The measure the House is considering, however, does not go far enough to ensure that military trials will be conducted in a fair and open fashion. For instance, the bill still allows certain classified evidence to be kept secret from defendants, giving them access only to evidence with large redacted portions. And it still permits certain cases under which a military judge could allow a trial in absentia. Perhaps most egregiously, the measure actually blocks the ability of innocent detainees to challenge the validity of their detention in an independent judicial tribunal because the bill denies the right of detainees to bring a habeas corpus action.

Mr. Speaker, habeas corpus is not ''special treatment for terrorists,'' as proponents of the measure claim. Rather, it is a legal procedure that has the power to exonerate innocent detainees—not terrorists—who have been imprisoned and not brought to trial. Indeed, the writ of habeas corpus is the bedrock of the rule of law and traces its heritage back to the signing of the Magna Carta in 1215 A.D.

Denying habeas corpus review for detainees in U.S. custody is simply another unwarranted attempt by the Executive branch to arrogate powers vested by the Constitution in the Federal judiciary. If the bill before us becomes law, the administration could pick and choose not only who could be tried, but could hold them in prison indefinitely with no possibility of judicial review.

Although the bill does not technically redefine the Geneva Conventions, the measure does nothing to curb the power of an executive branch, like the current one, with a track record of abusing the human rights of secret military detainees. The bill states that the President has the '' authority to interpret the meaning and application of the Geneva Conventions,'' and could do so through executive orders. There is no question that President Bush fully intends to authorize the CIA to continue what it euphemistically refers to as ''alternative interrogation techniques.''

We know now that most of these interrogations using ''alternative techniques'' have occurred in secret ''black site'' prisons in Eastern Europe and other foreign lands in clear and direct violation of Common Article 3, which prohibits signatories from inflicting ''cruel treatment and torture'' and ''humiliating and degrading treatment'' upon individuals who are not actively engaging in combat, including soldiers who have surrendered or been arrested and become prisoners of war.

The bill may technically skirt the issue of America's conduct under the Geneva Conventions. But if American personnel blithely toss aside our international treaty obligations to uphold standards in the detention and interrogation of wartime prisoners, America will alienate our long-time allies who are crucial partners in the fight against terrorism. If America whisks people from the streets into secret detention facilities, and then uses secret evidence to convict them in special courts, it will do more to embolden our enemies than any extremist jihad web site ever could.

Mr. Speaker, this is far too serious an issue to be used as a script for the mud-slinging commercials of campaign season. The very fact that the House is considering such legislation shows that Congress has not been exercising adequate authority over an arrogant and overbearing executive branch. There is a great need for a system to try suspected terrorists, both for the sake of the families of the victims of the September 11 attacks and for the sake of our American men and women fighting overseas. But the bill before the House—despite being labeled as a ''compromise''—fails to provide truly open trials and does not even allow innocent detainees to challenge their imprisonment. It is just another opportunity to rubber-stamp the President's ill-advised plan, and should be defeated.

Mr. Speaker, in the final analysis, the debate today is not about the terrorists or America's enemies; it is about the character of our country. It is not about them; it is about us. It is not about the terrorists; it is about who we are. We are the United States of America. We fight hard but we fight fair. We fight to defend our families, our friends, the powerless and unprotected. We fight to preserve our way of life and the ideas we believe in. And here is what we believe:

We believe in equal justice under law.

We believe in the dignity of the human being.

We believe in fair play and square dealing.

We believe in opportunity for all, responsibility from all, and community of all.

We believe in personal liberty and the public interest.

We believe in freedom of conscience and worship.

Mr. Speaker, the Global War on Terror is not just a battle of arms, though arms we need. It is also a battle of ideas over how we should live. If we jettison the principles bequeathed us by our forebears to gain a temporary and fleeting advantage over our enemies, then we will succeed in doing something no adversary ever could do and that is to defeat ourselves.

Mr. Speaker, we do not need to surrender our cherished beliefs, values, and liberties to prevail against our enemies. We need only conduct our affairs by the principles of honor and freedom that have made this nation the strongest, most powerful, and most admired nation in the history of the world.

I urge my colleagues to reject this ill-conceived and unwise legislation.

Mr. PAUL. Mr. Speaker, I rise in strongest opposition to this ill-conceived legislation. Once again, the House of Representatives is abrogating its Constitutional obligations and relinquishing its authority to the executive branch of government.

Mr. Speaker, this legislation will fundamentally change our country. It will establish a system whereby the President of the United States can determine unilaterally that an individual is an ''unlawful enemy combatant'' and subject to detention without access to court appeal. What is most troubling is that nothing in the bill would prevent a United States citizen from being named an ''enemy combatant'' by the President and thus possibly subject to indefinite detention. Congress is making an enormous mistake in allowing such power to be concentrated in one person.

Additionally, the bill gives the President the exclusive authority to interpret parts of the Geneva Convention relating to treatment of detainees, to determine what does and does not constitute a violation of that Convention. The President's decision on this matter would not be reviewable by either the legislative or judicial branch of government. This provision has implications not only for the current administration, but especially for any administration, Republican or Democrat, that may come to power in the future.

This legislation eliminates habeas corpus for alien unlawful enemy combatants detained under this act. Those thus named by the President will have no access to the courts to dispute the determination and detention. We have already seen numerous examples of individuals detained by mistake, who were not involved in terrorism or anti-American activities. This legislation will deny such individuals the right to challenge their detention in the court. Certainly we need to prosecute those who have committed crimes against the United States, but we also need to be sure that those we detain are legitimately suspect.

I am also concerned that sections in this bill dealing with protection of U.S. personnel from prosecution for war crimes and detainee abuse offenses are retroactively applied to as far back as 1997.

Mr. Speaker, this bill will leave the men and women of our military and intelligence services much more vulnerable overseas, which is one reason many career military and intelligence personnel oppose it. We have agreed to recognize the Geneva Convention because it is a very good guarantee that our enemy will do likewise when U.S. soldiers are captured. It is in our own interest to adhere to these provisions. Unilaterally changing the terms of how we treat those captured in battle will signal to our enemies that they may do the same. Additionally, scores of Americans working overseas as aid workers or missionaries who may provide humanitarian assistance may well be vulnerable to being named ''unlawful combatants'' by foreign governments should those countries adopt the criteria we are adopting here. Should aid workers assist groups out of favor or struggling against repressive regimes overseas, those regimes could well deem our own citizens ''unlawful combatants.'' It is a dangerous precedent we are setting.

Mr. Speaker, we must seek out, detain, try, and punish if found guilty anyone who seeks to attack the United States. We in Congress have an obligation to pass legislation that ensures that process will go forward. What Congress has done in this bill, though, is to tell the President ''you take charge of this, we reject our Constitutional duties.'' I urge my colleagues to reject this ill-conceived piece of legislation.

Mr. CARDIN. Mr. Speaker, Congress has an obligation under the Constitution to enact legislation that creates fair trials for accused terrorists that will be upheld by the courts. We also have an obligation to protect our troops that fall into enemy hands, and to uphold American values and the rule of law. Finally, even during wartime, the President must work with Congress and the courts to uphold our Constitution. In June, the Supreme Court in Hamdan v. Rumsfeld struck down the President's military commissions, since they violated the Uniform Code of Military Justice and the Geneva Conventions. The Court noted that Congress, not the president, has the authority under Article I, Section 8 of the Constitution to ''define and punish piracies and felonies committed on the high seas, and offenses against the law of nations.''

I strongly support our government's efforts to isolate, track down, and ultimately kill or capture suspected terrorists who are planning terrorist attacks against the United States. We must bring these terrorists to justice swiftly. We must also strengthen our efforts to protect the homeland by providing additional resources to law enforcement and emergency services personnel who are charged with disrupting and responding to a terrorist attack in the United States. As a former member of the Homeland Security Committee, I have fought hard to implement the recommendations of the 9/11 Commission and to distribute our homeland security funds on the basis of actual threats and vulnerabilities.

I am therefore extremely disappointed, Mr. Speaker, that the House leadership failed to reach out to members on both sides of the aisle in crafting this legislation. We should heed the warning given by our former Chairman of the Joint Chiefs of Staff and former Secretary of State Colin Powell, who states that ''the world is beginning to doubt the moral basis of our fight against terrorism.''

The 9/11 Commission recommended that ''the United States should engage its friends to develop a common coalition approach toward the detention and humane treatment of captured terrorists. New principles might draw upon Article 3 of the Geneva Conventions . . . Allegations that the United States abused prisoners in its custody make it harder to build the diplomatic, political, and military alliances the [U.S.] government will need.'' This legislation today undermines the protections of the Geneva Convention, and by weakening our moral authority makes it harder for us to work

with allies to win the war on terrorism and protect Americans.

I share the concerns of the many current and former military officers that testified to Congress that any weakening of these protections will place American soldiers at risk if they are captured overseas. I am pleased that last December Congress adopted Senator MCCAIN's legislation and outlawed the use of torture, and cruel, inhuman or degrading treatment by U.S. personnel, which would endanger the treatment of our American soldiers overseas. I am disappointed, therefore, that this legislation allows the use of statements obtained by some this prohibited behavior to be admissible in court.

Finally, this legislation eliminates the fundamental legal right of habeas corpus, which would permit our government to hold detainees indefinitely without charge, trial, or the right to an independent hearing to weigh the evidence against the accused terrorist.

We must join with our allies to win the war on terrorism and bring terrorists to justice. Our Constitution contains the very values we hold dear and that makes us proud to be Americans, and which motivate our soldiers to lay down their lives in defense of this country. I have sworn to uphold and defend our Constitution and to protect our democracy. This legislation takes a step backward, is inconsistent with the rule of law, and will make it harder to work with our allies to build an effective coalition to defeat terrorism. I therefore will vote against this legislation.

Five years after the 9/11 attacks, it is inexcusable that not a single one of the terrorists who planned the 9/11 attacks has been brought to trial. I am hopeful that the Senate will improve this legislation as Congress continues to discharge its constitutional duty to create military commissions that are consistent with the rule of law and that will result in convictions of terrorists that will be upheld by our courts.

Mr. LANTOS. Mr. Speaker, we are embarking on a debate of extraordinary importance to the Nation and to our success on the war on terrorism. It is centered on a fundamental issue of concern to anyone who cares about human rights—and there are still many of us, thankfully.

So this should be a debate about ideas, and there should be full and complete deliberation.

Unfortunately, because of an arrogant White House and a Republican Leadership in this House that has simply bowed to the Executive's will—as it has so many times before—we have once again made the consideration of a critical legislative initiative a charade, a debate being conducted with undue haste and without any serious consideration.

Mr. Speaker, since September 11, 2001, one of the most vexing problems that has faced our country in the struggle against the forces of nihilism and extremism is our approach to those who come into our custody because we believe they are a danger to the United States. We have seen unclear policy and muddy thinking leading to cruel treatment of those in U.S. custody, with some conduct even amounting, in the view of the former General Counsel to Department of the Navy under this Administration, to be torture. Finally, last June the Supreme Court ruled that the Administration's unilateral set of rules for trying terrorist suspects was unlawful.

Let us make no mistake about it—our treatment of detainees and our failure to come up with a joint approach with our allies has damaged our ability to prosecute successfully the war on terrorism. It has endangered our troops by setting standards for others that I believe we will deeply regret. It has impeded our ability to work with many of our allies who have a different view from this Administration on the obligations of the Geneva Convention, one that has since been adopted by our own Supreme Court. It has undermined our legitimacy worldwide and been a recruiting tool for our enemies.

The legislation before us should be an effort to address these problems, and in some ways it has. It establishes a better framework for trying detainees than the one established by the Administration. And by keeping it a crime to engage in serious physical abuse against detainees, it prohibits the worst of the abuses that we have seen, including those that are also banned by the Army's new Field Manual on interrogation, including forcing the detainee to be naked, perform sexual acts, or pose in a sexual manner; placing hoods or sacks over the head of a detainee or using duct tape over the eyes; applying beatings, electric shock, burns, or other forms of physical pain; waterboarding; using working dogs during an interrogation; inducing hypothermia or heat injury; conducting mock executions; depriving the detainee of necessary food, water, sleep or medical care.

Unfortunately, Mr. Speaker, the legislation remains deeply flawed in more ways than I have time to describe here. It prohibits any detainee from ever raising the Geneva Conventions in any case before any court or military commission, a provision that I fear will be used against our own troops if they are ever captured by the enemy. It takes actions against existing lawsuits and establishes a whole new system for military appeals that is constitutionally suspect, will lead to even more court cases, and could leave us five years from now with exactly the same number of convictions we have under the existing military tribunal system: zero. We should be trying to expedite trials of terrorist suspects, not providing the basis for more delays. And, acting directly against the recommendations of the bilateral 9–11 Commission, this legislation does not represent a joint approach with our allies.

Mr. Speaker, nearly 60 years ago, I fled from a continent in ruins from a war conducted without rules, marked by atrocities on a scale that the world had never seen. Much of that continent was under a dictatorship in Moscow that was bent on oppressing its citizens and those under its dominance everywhere. So the issues presented by this bill are more than a policy debate to me.

I am profoundly disappointed by what we are doing today. It does not represent progress in protecting our troops and civilians who are caught up in armed conflict. It represents a retreat.

The Geneva Conventions were meant to protect people like me and our country's troops from the worst abuses of war. This country has always stood for the upholding and supporting those protections and expanding them whenever we could, in our national interest.

We should not be rushing legislation through now, just before an election, when we know it won't be needed for many months. We should not be considering a bill that is substantially different from the one that has been already put through our Committees. And we should not be debating legislation without any chance of presenting our individual ideas for improving it.

But here we are. Under these circumstances, I oppose this legislation and fully expect to be back debating these issues when the Supreme Court overturns this ill-advised legislation.

Mr. NADLER. Mr. Speaker, this is how a nation that has become fearful loses its moral compass, its identity, its values, and, ultimately, its freedom.

It is ironic that the people who use the word freedom with reckless abandon, in everything from fries to a global vision, should come before the American people today advocating for the suspension of habeas corpus, secret Star Chamber tribunals, unlimited detention without review and, yes, torture.

I know, we've been told it's not really torture, but I am sickened by the quibbling, legalistic hair splitting on something so basic to our nation's fundamental values.

Have you forgotten? We are America.

Let me say that again: we are the United States of America.

We have stood as a beacon to the world. People have aspired to our way of life, our values, our example, our leadership.

We are told that our enemies do not respect the rules of war or the rights of their captives, but do you really believe that ''somewhat better than al Qaeda'' is how we should measure our conduct? I don't.

And now, with scant deliberation, in an election eve stampede, we are urged to throw-away our values, our honor, our constitution, and our standing in the world as if it were yesterday's newspaper.

Yes, we must be vigilant to keep our nation safe, but we must not stand by while the honor and values of our nation are permanently stained by this detestable legislation. It is beneath us. It is not what we stand for.

Benjamin Franklin once said ''they that can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety.'' He was right.

Perhaps if this administration had the minimal competence necessary to make us safe, we might have a debate about the wisdom of Franklin's and the Founders' commitment to liberty. But this administration has demonstrated beyond any doubt that it is not our values that place us at risk, but its own incompetence, and the willingness of a rubber-stamp Republican Congress to follow the President over any cliff.

What are we being asked to do here, and why are we being asked to rush to judgement?

There are many infamies in this bill, as others have pointed out. I will concentrate on just one.

This bill would allow the President, or any future President, to grab someone off a street comer in the United States, or anywhere else in the world, and hold them forever, without any court review, without having to charge them, without ever having to justify their imprisonment to anyone.

This bill is flatly unconstitutional, for it repeals the Great Writ—Habeas Corpus. Not a statutory writ, but the Constitutional Great Writ.

Read the bill. I know we're not supposed to do that in the Republican Congress, but, just

this once, for the sake of our nation, please read the bill.

Turn to page 93.

No court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the United States who has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.

''Awaiting such determination?'' That says it all. Nowhere in this new law is there any time limit for making this determination. In fact, it could be never.

We are told that these procedures are only for those who the President has called ''the worst of the worst.''

How do we know they are the worst of the worst? Because the President says so, and the President, and federal bureaucrats, as we know, are never wrong.

Some people held as ''unlawful enemy combatants'' may be put before a military tribunal, but they need not be. They can be held forever without any hearing.

A person designated as an ''unlawful enemy combatant'' can challenge his detention only if he is brought before a military commission, or a Combat Status Review Tribunal, and only after the military commission and all the appellate procedures are finished. Then he can appeal to the D.C. Circuit, but only to review the legal procedures. The court can never look at the facts. That's on page 56.

So, let's review:

The government can snatch anyone who is not a U.S. citizen, anywhere in the world, including on the streets of this city, whether or not they are in a combat situation, whether or not they are actually doing anything, and detain them forever, out of reach of our constitution, our laws, and our courts.

It also says that a court can never review the conditions of detention, which is an elegant way of saying no court can hear a claim that the detainee was tortured. Ever.

Who is subject to these rules? Well the President wants you to think this is only about Khalid Sheikh Mohammed. Bad guy. Dangerous guy. Deserves to be locked up. We all agree on that one.

But it could also mean a lawful permanent resident. Someone like my grandmother while she was waiting to become a loyal American citizen, which she did, and which is why I am fortunate enough to have been born in this great country. It would apply to the relatives of anyone in this room who is not a Native American.

We rebelled against King George III for far lesser infringements of our liberties than this. This bill makes the President a dictator—for the power to order people jailed forever without being subject to any judicial review is the very definition of dictatorial power.

The President wants to live in a law-free zone. He does not want to be bound by the law of war or by our treaty obligations. He does not want to be answer to our Constitution, to the Congress or to the Courts.

If someone is in this country and he commits a crime, we have laws to stop him and lock him up. If those laws, including the Classified Information Procedures Act, don't work, we can improve them. That's how we put Zacarias Moussaoui in jail. Anyone remember the 11th hijacker? We caught him, tried him in a regular court, and now he's in jail.

Perhaps if this administration hadn't been asleep at the switch, we might have caught him before September 11th, and saved our nation from that terrible crime.

We could also hold people as prisoners of war if we catch them on the battlefield. That's worked pretty well in all our wars.

We can set up new rules that actually sort out the bad guys from the people we just grabbed, or who were sold to us by a rival group, as happened in Afghanistan. We already know that some of the people in Guantanamo have been there for years for nothing. Some of them have been released and some of them are still there. How does that make us safer?

And then there's torture. When is torture not torture? Apparently whenever the President and his team of legal scholars says it isn't.

This bill would write that dangerous practice into law.

It would also allow statements extracted under torture to be used as evidence. See page 17 of the bill.

Is it really hard, as the President and some members of Congress say, to understand the difference between legal interrogation and illegal torture? The people who wrote the Army Field Manual, and the people who train our troops, have never thought so. It only became a question when this President decided he was above the law.

Now the President wants to have us grant him immunity, in advance, for whatever he might have ordered. That's a neat trick, and it's in this bill.

Mr. Speaker, rarely in the life of a nation is the question so stark. Are we going to rush this complete repudiation of all we stand for through the Congress to give the Republicans an election issue? I hope we are not as cynical as some here seem to think we are.

There is nothing we are doing today that we can't do properly with some care and deliberation. There is no danger that someone is going to be released from custody. This administration has certainly fiddled for the last few years without accomplishing anything.

Perhaps, just perhaps, this time we can do it right. Let's try. That's the oath we took when we became members of this House. That's the responsibility we have today.

Mr. GEORGE MILLER of California. Mr. Speaker, all Members of Congress support the effort to thwart international terrorism and make Americans safe. But there are right ways and wrong ways to carry out that critical effort. The military commissions bill before us today is the wrong way, and I urge my colleagues to vote against it.

The Geneva Convention protects Americans everywhere. Congress should not alter our international obligations in an election-year rush ordered by Karl Rove's partisan strategy shop.

We cannot use international law to justify America's actions when it suits our purposes and ignore it when it does not.

America has given its word to the rest of the world that we win abide by the Geneva Conventions.

Redefining our interpretation of the Geneva Convention is a slippery slope. Consider the words of the Navy's own Judge Advocate General, who testified to Congress on the possible implications of altering America's commitment to the Geneva conventions:

''I would be very concerned about other nations looking in on the United States and making a determination that, if it's good enough for the United States, it's good enough for us, and perhaps doing a lot of damage and harm internationally if one of our servicemen or servicewomen were taken and held as a detainee.''

Beyond military personnel, the Geneva Conventions also protect those not in uniform—special forces personnel, diplomatic personnel, CIA agents, contractors, journalists, missionaries, relief workers and all other civilians. Changing our commitment to this treaty could endanger them, as well.

In addition to my concerns about our commitment to the Geneva Conventions, there is a real possibility that this bill will not stand up to judicial scrutiny. The Supreme Court in ''Rasul v. Bush'' decided that detainees have habeas corpus rights. And well established case law lays out that legislation depriving federal courts of jurisdiction does not effect currently pending cases. And nine former federal judges recently wrote:

''Congress would thus be skating on thin constitutional ice in depriving the federal courts of their power to hear the cases of Guantanamo detainees. . . . If one goal of the provision is to bring these cases to a speedy conclusion, we can assure you from our considerable experience that eliminating habeas would be counterproductive.''

Sacrificing our principles makes us neither safe nor free. In fact, there is some evidence that sacrificing our principles in this bill may make us less safe.

Just yesterday, the President declassified portions of a National Intelligence Estimate—or NTE—which, news accounts say, details that U.S. foreign policy in Iraq and elsewhere has increased the spread of terrorism, making America less safe.

One of the key reasons outlined in the NTE for this conclusion was that, entrenched grievances of injustice help create an anti-U.S. sentiment among Muslims that terrorist groups exploit to recruit new members and grow the jihadist movement—the images of and stories about detainee abuse at Abu Ghraib; the unexplained death of prisoners at the Bagram Collection Point in Afghanistan; the denial of habeas corpus rights to detainees at Guantanamo bay; the use of extraordinary rendition to kidnap suspected enemies of the state anywhere in the world; and secret CIA prisons.

These incidents have all helped spread anti-U.S. sentient around the world. This has alienated us from friends and allies and added to the list of grievances terrorist groups like al Qaeda use to recruit new jihadists.

The President should have the best possible intelligence to prevent future terrorist attacks on the United States and our allies. And those responsible for 9/11 and other terrorist acts should be brought to justice, tried, and punished accordingly, and their convictions should be upheld by our courts.

Sadly, this legislation does not accomplish any of those things. For that reason, I encourage my colleague to vote against its passage.

Mr. CROWLEY. Mr. Speaker, I have lost faith in this Republican controlled Congress. The Congress is no longer about doing what is right for out country.

My colleagues on the other side of the aisle care more about giving the President what he wants then what is in the best interests of the people we are here to represent.

And in case my friends don't read, the country does not have a very high opinion of this Congress and the rest of our government.

This Congress granted an excessive amount of executive power to the President to wage his war on terror with no oversight.

That excessive power brought us to our present day problems and this President is unwilling to fix these problems or even admit they exist.

We must reclaim our Constitutional authority and bring America back to the moral high ground.

Regardless of how we feel about detainees, we must treat them humanely and in accordance with our rule of law and the Geneva Conventions.

The example set by the United States is the example given to our own soldiers in the field.

These terrorists are vicious murderers, I know firsthand because they killed my cousin on 9/11, but my values as an American are what keeps those hatreds in check.

I find it amazing that the man who campaigned on bringing values back to the Oval office has lead the perception of our nation to an all time low.

Torture and harsh interrogation techniques are not my values and are not those of the American people.

We must lead by example on these issues, not be an evasive quasi participant.

Our soldiers are abroad fighting a battle our President has not allowed them to win because of his continued mismanagement of all aspects of the war.

The National Intelligence Estimate done by our 16 intelligence agencies flat out says that the war in Iraq has actually invigorated the growth of terrorism and worsened the threat around the globe.

We diverted all our attention from Afghanistan where the terrorists actually are and invaded Iraq on false statements and scare tactics.

This Administration with the help of the Republican controlled Congress has continued to stay on the wrong course.

Today, we could have had an opportunity to fix ones of those mistakes, but we are ignoring the respect for due process and denying Habeas Corpus to detainees.

This bill disregards the Hamdan decision, which stated that it should be a requirement of a ''regularly recognized constituted court affording all the judicial guarantees which are recognized as indispensable by civilized people.''

As civilized people we must respect our laws, without the rule of law we would have chaos.

The Bush Administration still refuses to explain why we even need a different judicial system for accused terrorists.

We must take the back the moral high ground in Congress just like many of our military leaders on the ground threw out the Department of Defenses recommendations on interrogation and instead decided to strictly follow the Geneva Conventions.

We should be following the advice of our military who truly understand what the Geneva Conventions mean, not the civilian leadership who stay out of harms way.

The President wants this Congress to bend the rules of our laws and the Geneva Conventions, a document that has protected our soldiers abroad since its inception.

I ask my colleagues, are you prepared to bend those laws that have governed us so successfully so the President can have the power to allow the harsh interrogations tactics and detention of detainees who mayor may not be terrorists.

We need to regain our stature as a world leader.

I hate these terrorists and I believe they should be punished, punished for the murder of my cousin on 9/11.

But they should be punished under the rule of law.

I pray this Congress will lead by example and not follow the example of the terrorists.

Mr. STARK. Mr. Speaker, I rise to defend American values.

The Military Commissions Act—H.R. 6166—continues Republicans' despotic assault on the Constitution. It denies detainees held abroad the fundamental right of habeas corpus, which has for centuries protected against unjust government imprisonment. It limits protections against detainee mistreatment, sanctioning ''alternative procedures'' of interrogation that amount to cruel and unusual punishment. It denies people the opportunity to confront the evidence used against them—even if that evidence is obtained through coercive and inhumane practices. It strips our courts of the jurisdiction to review cases—including those already pending—concerning detainee abuse.

Some call this legislation a ''compromise.'' I call it a capitulation. No sooner had the ink dried on this deal than the Bush administration declared that the CIA's program of secret detention and interrogation could and would continue. That should come as no surprise. Though this bill does not explicitly redefine our obligations under the Geneva Conventions, it permits the President to ''interpret the meaning and application'' of our historic commitment to the international community—and theirs to us.

Make no mistake, our disregard for international law imperils the safety and security of our men and women in uniform. Our denial of due process to detainees invites foreign states and organizations to indefinitely imprison and interrogate our soldiers. Our insistence on defining detainees as ''enemy combatants'' undeserving of legal protections encourages our adversaries to deny these very same protections to American prisoners. Provided, of course, we haven't already done so ourselves: This legislation allows the Government to declare not only foreigners, but also U.S. citizens, ''enemy combatants'' and arrest and hold them indefinitely.

This legislation further confirms that Republicans in Congress are no more interested in fundamental human rights than is President Bush and his administration. I urge my colleagues to vote ''no.''

Mr. CLEAVER. Mr. Speaker, I was unable to personally cast votes today because I was attending a memorial service for SFC Michael Fuga. Sergeant Fuga was killed September 9, 2006 in Kandahar, Afghanistan. Sgt. Fuga was assigned to the Missouri National Guard's 35th Special Troops Battalion based in St. Joseph, MO. He and his family made Independence, in the district I am proud to serve, their home. Sgt. Fuga was 47 and had spent 28 years of his life in the Army. At the time of his death, he was training Afghan armed forces to help bring peace and stability to a nation that has known neither for decades.

SGM James Schulte, who was in charge of Sergeant Fuga's deployment said, ''He was a true patriot and a great family man. I am truly honored to have known and served with him.'' We should all be so lucky to have something like that be said of us when we are gone.

Sergeant Fuga volunteered to extend his time in Afghanistan because, his family says, he was committed to defeating those who attacked our Nation 5 years ago this week. Each day we are blessed to live under the freedoms which Sergeant Fuga and his colleagues in the Armed Forces so bravely serve to protect and ensure.

Sergeant Fuga leaves behind his wife and 12-year-old daughter.

I do not take the decision to miss votes lightly, but hope I can provide Sergeant Fuga's family some comfort on what will be a difficult night.

Today, the House of Representatives debated and voted on H.R. 6166—Military Commissions Act.

Republicans tried to paint those who were not in favor of the bill as being soft on bringing terrorists to justice and meting out just punishment. They implied that those who were not in favor of the measure were trivializing the heinous crimes perpetrated against American citizens and service members.

They refused to allow an open debate by suppressing thoughtful and germane amendments designed to strengthen the intent of the legislation. Once again they rushed through a piece of bad legislation written to appease an administration stubbornly determined on doling out justice as it sees fit. I am disheartened by the lack of importance this administration places on human rights, on due process, and on upholding the Constitution of these United States.

Mr. LANGEVIN. Mr. Speaker, I rise in opposition to H.R. 6166 and am deeply disappointed that Congress has missed an opportunity to act in a bipartisan manner to prosecute those who would do harm to Americans, while ensuring that such efforts would withstand legal scrutiny.

In June, the Supreme Court ruled in Hamdan v. Rumsfeld that President Bush exceeded his authority by establishing military commissions to try detainees in the global war on terrorism without explicit congressional approval. That decision presented Congress with an important opportunity to develop a proposal to try some of the world's most dangerous people and to provide swift justice to those who engaged in horrendous acts against our Nation. Unfortunately, instead of proceeding in a bipartisan manner to craft legislation that enjoys the full confidence of this body, Congress is faced with a proposal negotiated exclusively by Republicans and whose actual effectiveness in prosecuting terrorists remains in question.

After the Hamdan decision, the House Armed Services Committee held numerous hearings on how Congress should respond, and I commend the chairman for his efforts to ensure that committee members learned the complexities of this topic.

One constant theme we heard from the witnesses testifying was that Congress should ensure that any system established to try military detainees followed existing legal procedures to the greatest extent practicable.

On that point, let us be clear. Despite the mischaracterizations of some Members on the floor today, no one has recommended giving terrorists the same rights as criminals or members of our Armed Forces. Everyone recognizes that many of these detainees are dangerous people, and we agree that the judicial

system used to try them must reflect the complexities of prosecuting enemy combatants in the midst of an ongoing war. What the legal experts did counsel, though, was that if military commissions did not include basic, broadly accepted principles of jurisprudence, the commissions could be subject to legal challenge.

Unfortunately, we have no idea if the legislation before us will withstand such scrutiny because the commissions it would establish vary significantly from other accepted forms of tribunals that have been used to prosecute crimes in times of war.

I hope that this legislation does ultimately pass constitutional muster, because it would be a devastating blow to our efforts to combat global terrorism if the conviction of a terrorist were overturned on a legal challenge. However, because I am not confident that the legislation will be upheld, I must oppose it.

The other overarching concern I have with this measure is the impact it will have on the United States' obligations under the Geneva Conventions. The legislation would give the President broad authority to interpret U.S. compliance with the Geneva Conventions and would create confusion about which practices would be prohibited. The Supreme Court specifically stated in Hamdan that basic protections of the Geneva Conventions' Common Article 3 apply to detainees, but the legislation actually complicates compliance with Common Article 3 by creating new definitions of offenses that do not comport with international law. Unfortunately, this change could endanger our own men and women in uniform by encouraging other nations to redefine how they treat captured prisoners. We would not want other nations to offer anything other than full Geneva protections to our own troops, and we must therefore respect the concept of reciprocity on which the Conventions were established.

As Colin Powell noted, respecting the Geneva Conventions not only protects our own servicemembers, but it affirms our commitment to international standards of law and justice at a time when our moral authority in the global war on terrorism is increasingly being questioned.

I am deeply disappointed that, on a matter of such importance to the American people, Congress did not act in a careful and bipartisan fashion to establish a system of military commissions that can protect the American people and withstand legal scrutiny. Instead, the leadership is forcing this measure through the House while ignoring some very valid concerns. I simply ask where their sense of urgency was nearly 5 years ago when the President established military tribunals without congressional input.

Some of my Democratic colleagues have argued for years that we need greater congressional involvement in the justice system for military detainees, but those appeals were ignored. Once again, Congress has abdicated its constitutional oversight responsibility for too long and, when finally forced to act, has chosen partisanship over sound policy.

I urge my colleagues to oppose this measure so that we can craft an alternative that is tough on terrorists while meeting our legal and international obligations.

The SPEAKER pro tempore. All time for debate has expired.

Pursuant to House Resolution 1042, the previous question is ordered on the bill, as amended.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MR. SKELTON

Mr. SKELTON. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentleman opposed to the bill?

Mr. SKELTON. I am, Mr. Speaker.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Mr. Skelton moves to recommit the bill H.R. 6166 to the Committee on Armed Services with instructions to report the same back to the House forthwith with the following amendment:

At the end of the bill, add the following new sections:

SEC. 11. EXPEDITED JUDICIAL REVIEW.

Notwithstanding any other provision of law, the following rules shall apply to any civil action, including an action for declaratory judgment, that challenges any provision of this Act, or any amendment made by this Act, on the ground that such provision or amendment violates the Constitution or the laws of the United States:

(1) The action shall be filed in the United States District Court for the District of Columbia and shall be heard in that Court by a court of three judges convened pursuant to section 2284 of title 28, United States Code.

(2) An interlocutory or final judgment, decree, or order of the United States District Court for the District of Columbia in an action under paragraph (1) shall be reviewable as a matter of right by direct appeal to the Supreme Court of the United States. Any such appeal shall be taken by a notice of appeal filed within 10 days after the date on which such judgment, decree, or order is entered. The jurisdictional statement with respect to any such appeal shall be filed within 30 days after the date on which such judgment, decree, or order is entered.

(3) It shall be the duty of the United States District Court for the District of Columbia and the Supreme Court of the United States to advance on the docket and to expedite to the greatest possible extent the disposition of any action or appeal, respectively, brought under this section.

SEC. 12. REAUTHORIZATION REQUIRED.

(a) MILITARY COMMISSIONS.—No military commission may be convened under chapter 47A of title 10, United States Code, as added by this Act, after December 31, 2009, except for trial for an offense with respect to which charges and specifications against the accused are sworn under section 948q(a) of that title before that date.

(b) TREATY OBLIGATIONS.—Effective on December 31, 2009—

(1) sections 5, 6(a), and 6(c) of this Act shall cease to be in effect; and

(2) section 2441 of title 18, United States Code, is amended—

(A) in subsection (c), by striking the text of paragraph (3) and inserting the text of that paragraph as in effect on the day before the date of the enactment of this Act; and

(B) by striking subsection (d) (as added by section 6(b)(1)).

Mr. SKELTON (during the reading). Mr. Speaker, I ask unanimous consent that the motion to recommit be considered as read and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Missouri?

There was no objection.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Missouri is recognized for 5 minutes in support of his motion.

Mr. SKELTON. Mr. Speaker, it is our obligation in this body to fix the deficiencies in this system in order to bring terrorists to justice. My motion to recommit with instructions would add two important elements to the bill that address this basic concern. First, it would require an expedited constitutional review of the entire matter. That is what we need. Second, it would require reauthorization of these military commissions after 3 years.

Expedited judicial review is a well-known way to improve legislation for which legal challenges can be anticipated, and we can be sure that the military commissions system created by this bill will be subject to change. We can provide for expedited review of civil actions challenging the legality of this act by creating a three-judge panel of the D.C. District Court that would hear the actions. The U.S. Supreme Court would then review a judgment or review an order of the panel on an expedited basis.

This type of provision is routinely placed in novel legislation. It was part of the McCain-Feingold campaign finance bill, part of the Voting Rights Act, and part of the Communications Decency Act.

The motion to recommit would also require that Congress reauthorize these military commissions after 3 years and would allow any action before a military commission begun before 2010 to go forward, but it would require an educated debate on reauthorizing this system after we have had some real-world experience with this new judicial process.

There is ample precedent for requiring reauthorization for controversial measures passed in a hurry in times of conflict. Most recently, Mr. Speaker, the PATRIOT Act contained reauthorization, or sunset, provisions. And taken together, Mr. Speaker, these two provisions will significantly improve the flawed legislation that we have before us today.

We need not only to be tough. We need to be certain. And my motion to recommit would make this more certain that those despicable terrorists would be brought to justice.

The SPEAKER pro tempore. Does the gentleman from California claim time in opposition to the motion to recommit?

Mr. HUNTER. Yes, Mr. Speaker.

The SPEAKER pro tempore. The gentleman is recognized for 5 minutes.

Mr. HUNTER. Mr. Speaker, I do rise to oppose this motion.

First, let me thank my colleague, Mr. SKELTON, an outstanding gentleman and friend and a guy who cares about our country, and all the folks

who have really worked this issue and participated in the hearings and the briefings that we have had and the discussions with military experts.

Let me tell you why I oppose this. First, Mr. Speaker, the Supreme Court not only gave permission but invited the Congress to put together this new system to try terrorists. And I want to direct my colleagues to the opinion of Justice Breyer, where he said: ''Nothing prevents the President from returning to Congress to seek the authority he believes necessary.''

So the point is the Supreme Court has not only given us permission. They have given us the obligation of putting this together. The American people have given us the obligation of putting this together.

The idea that we are going to pass this legislation with an uncertainty, with a lack of confidence, sending a message that somehow we need two permissions, is, I think, exactly the wrong message to send to the world.

And I just remind my colleague Mr. SKELTON that when we had our initial hearings and our initial markup, Mr. SKELTON, you held up Senator GRAHAM in the Senate and Senator MCCAIN as having the gold standard with respect to this legislation and you offered their legislation. Let me tell you that this legislation will be introduced by them. The gentlemen that you said had the gold standard and judgment on what is fair, they will be introducing this in the other body very shortly.

So, my colleagues, this is not a time to seek a second permission before we have passed the first legislation that actually sets into force and effect this important structure with which to try terrorists.

□ 1600

Let me just go to the second problem with what Mr. SKELTON has. Mr. SKELTON has a sunset provision. This sunsets a very important part of the bill. It sunsets the commission. So it says we have to go back and redo it, that we don't have confidence in what we have done, and we have to redo it after 3 years.

The other bad part about this motion to recommit is it sunsets section 5 and section 6 which protect American troops. They say that you cannot sue American troops under Geneva article 3. You can't sue them civilly. Now that is a bad thing. That means that you would have, if this sunset goes into place that Mr. Skeleton is asking for, that you will have American troops exposed to civil suit by terrorists in American courts for alleged violations of Geneva article 3.

It also does away with this distinction that we have made between grave offenses under Geneva article 3. The real grave offenses, the murder, the torture, all of those things, goes away with the cleavage between that. And maybe an American female colonel interrogating a male Muslim, and therefore being construed as having degraded him and his culture by having an American female interrogate him, that distinction between that and a bad offense would now be erased and American troops would be exposed to civil liability and civil suits under Geneva article 3.

I would just ask my colleagues, if you have confidence in what we have done, and this has been a product of this body, of the other body, and of the administration working night and day to put together a solid package, if you have confidence in that, and you have confidence in this list of rights that we have enumerated, that we give to the defendants, that we give to the people who designed the attack on 9/11: the right to counsel, the right to proof beyond a reasonable doubt, the right to a secret vote in the jury so that a colonel cannot lean on a lieutenant to get a guilty verdict, the right against self-incrimination, all of the basic rights. If you look at that package of rights and you think that is enough for the terrorists, then vote ''yes'' on this bill, vote ''no'' on this motion to recommit.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise in strong support of the Skelton motion to recommit with instructions to the Armed Services Committee the bill H.R. 6166, the Military Commissions Act of 2006. I support the Skelton motion because it provides for expedited judicial review of the bill's constitutionality.

The need for expedited judicial review of the constitutionality of this proposed law is clear. Already, the Administration's military commissions plan has already been found fatally defective by the Supreme Court. That the majority has worked closely with the Administration to produce the bill before us provides little comfort or confidence that this bill will pass constitutional muster. It would be a shame to go prosecute detainees under the regime established in this bill only to have any convictions set aside because the procedures are later found to be constitutionally infirm.

Mr. Speaker, Congress should pass legislation that will provide the President with a tough and fair system of military commissions that will ensure swift convictions for terrorists and protect our men and women in uniform. But the legislation must also respond to the United States Supreme Court's ruling in the Hamdan case and withstand judicial scrutiny, or it may not serve its other purposes.

Many legal experts have raised serious questions about this bill's constitutionality. That is why it is critically important to quickly determine whether the statute will survive judicial scrutiny. Just think. If this bill is tied up in years of litigation and eventually struck down by the Supreme Court as unconstitutional, this could have disastrous implications: Convictions would be overturned; terrorists would have a "get-out-of-jail-free" card; and the United States would once again be left without a working military commissions system.

Mr. Speaker, there is a right way to remedy this situation and it is simple. Under the Skelton provision, the judicial review would occur early on and quickly—before there are trials and convictions. And it would help provide stability and sure-footing for novel legislation that sets up a military commissions system unlike anything in American history.

Such an approach provides no additional rights to alleged terrorists. All it does is give the Supreme Court of the United States the ability to decide whether the military commissions system under this act is legal or not. It simply guarantees rapid judicial review.

For this reason, I support the Motion to Recommit.

Mr. HUNTER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

RECORDED VOTE

Mr. SKELTON. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. Pursuant to clause 9 of rule XX, the Chair will reduce to 5 minutes the minimum time for any electronic vote on the question of passage.

The vote was taken by electronic device, and there were—ayes 195, noes 228, not voting 9, as follows:

[Roll No. 490]

AYES—195

Abercrombie	Eshoo	McIntyre
Ackerman	Etheridge	McKinney
Allen	Evans	McNulty
Andrews	Farr	Meek (FL)
Baca	Fattah	Meeks (NY)
Baird	Filner	Melancon
Baldwin	Ford	Michaud
Bean	Frank (MA)	Miller (NC)
Becerra	Gonzalez	Miller, George
Berkley	Gordon	Mollohan
Berman	Green, Al	Moore (KS)
Berry	Green, Gene	Moore (WI)
Bishop (GA)	Grijalva	Moran (VA)
Bishop (NY)	Gutierrez	Nadler
Blumenauer	Harman	Napolitano
Boren	Hastings (FL)	Neal (MA)
Boswell	Herseth	Oberstar
Boucher	Higgins	Obey
Boyd	Hinchey	Olver
Brady (PA)	Hinojosa	Ortiz
Brown (OH)	Holt	Otter
Brown, Corrine	Honda	Owens
Butterfield	Hooley	Pallone
Capps	Hoyer	Pascrell
Capuano	Inslee	Pastor
Cardin	Israel	Paul
Cardoza	Jackson (IL)	Payne
Carnahan	Jefferson	Pelosi
Carson	Johnson, E. B.	Peterson (MN)
Case	Jones (NC)	Pomeroy
Chandler	Jones (OH)	Price (NC)
Clay	Kanjorski	Rahall
Clyburn	Kaptur	Rangel
Conyers	Kennedy (RI)	Reyes
Cooper	Kildee	Ross
Costa	Kilpatrick (MI)	Rothman
Costello	Kind	Roybal-Allard
Cramer	Kucinich	Ruppersberger
Crowley	Langevin	Rush
Cuellar	Lantos	Ryan (OH)
Cummings	Larsen (WA)	Sabo
Davis (AL)	Larson (CT)	Salazar
Davis (CA)	Leach	Sánchez, Linda T.
Davis (IL)	Lee	
Davis (TN)	Levin	Sanchez, Loretta
DeFazio	Lipinski	Sanders
DeGette	Lofgren, Zoe	Schakowsky
Delahunt	Lowey	Schiff
DeLauro	Lynch	Schwartz (PA)
Dicks	Maloney	Scott (GA)
Dingell	Markey	Scott (VA)
Doggett	Matsui	Serrano
Doyle	McCarthy	Shays
Edwards	McCollum (MN)	Sherman
Emanuel	McDermott	Skelton
Engel	McGovern	Slaughter

Smith (WA)
Snyder
Solis
Spratt
Stark
Stupak
Tanner
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Tierney
Towns
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOES—228

Aderholt
Akin
Alexander
Bachus
Baker
Barrett (SC)
Barrow
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Biggert
Bilbray
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boustany
Bradley (NH)
Brady (TX)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burton (IN)
Buyer
Calvert
Camp (MI)
Campbell (CA)
Cannon
Cantor
Capito
Carter
Chabot
Chocola
Coble
Cole (OK)
Conaway
Crenshaw
Cubin
Culberson
Davis (KY)
Davis, Jo Ann
Davis, Tom
Deal (GA)
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Drake
Dreier
Duncan
Ehlers
Emerson
English (PA)
Everett
Feeney
Ferguson
Fitzpatrick (PA)
Flake
Foley
Forbes
Fortenberry
Fossella
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gilchrest
Gillmor
Gingrey
Gohmert
Goode
Goodlatte
Granger
Graves
Green (WI)
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Hobson
Hoekstra
Holden
Hostettler
Hulshof
Hunter
Hyde
Inglis (SC)
Issa
Istook
Jenkins
Jindal
Johnson (CT)
Johnson (IL)
Johnson, Sam
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kuhl (NY)
LaHood
Latham
LaTourette
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas
Lungren, Daniel E.
Mack
Manzullo
Marchant
Marshall
Matheson
McCaul (TX)
McCotter
McCrery
McHenry
McHugh
McKeon
McMorris Rodgers
Mica
Miller (FL)
Miller (MI)
Miller, Gary
Moran (KS)
Murphy
Murtha
Musgrave
Myrick
Neugebauer
Northup
Norwood
Nunes
Nussle
Osborne
Oxley
Pearce
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pombo
Porter
Price (GA)
Pryce (OH)
Putnam
Radanovich
Ramstad
Regula
Rehberg
Reichert
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Royce
Ryan (WI)
Ryun (KS)
Saxton
Schmidt
Schwarz (MI)
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (NJ)
Smith (TX)
Sodrel
Souder
Stearns
Sullivan
Sweeney
Tancredo
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Westmoreland
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOT VOTING—9

Castle
Cleaver
Davis (FL)
Jackson-Lee (TX)
Lewis (GA)
Meehan
Millender-McDonald
Ney
Strickland

□ 1628

Messrs. GALLEGLY, KENNEDY of Minnesota and MURTHA changed their vote from ''aye'' to ''no.''

Ms. ZOE LOFGREN of California, Messrs. GORDON, OTTER, BRADY of Pennsylvania, STUPAK, MOLLOHAN and KANJORSKI changed their vote from ''no'' to ''aye.''

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. BASS). The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Mr. HUNTER. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 253, noes 168, not voting 12, as follows:

[Roll No. 491]

AYES—253

Aderholt
Akin
Alexander
Andrews
Bachus
Baker
Barrett (SC)
Barrow
Barton (TX)
Bass
Bean
Beauprez
Biggert
Bilbray
Bilirakis
Bishop (GA)
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Bono
Boozman
Boren
Boswell
Boustany
Boyd
Bradley (NH)
Brady (TX)
Brown (OH)
Brown (SC)
Brown-Waite, Ginny
Burgess
Burton (IN)
Buyer
Calvert
Camp (MI)
Campbell (CA)
Cannon
Cantor
Capito
Carter
Chabot
Chandler
Chocola
Coble
Cole (OK)
Conaway
Cramer
Crenshaw
Cubin
Cuellar
Culberson
Davis (AL)
Davis (KY)
Davis (TN)
Davis, Jo Ann
Deal (GA)
Dent
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Drake
Dreier
Duncan
Edwards
Ehlers
Emerson
English (PA)
Etheridge
Everett
Feeney
Ferguson
Fitzpatrick (PA)
Flake
Foley
Forbes
Ford
Fortenberry
Fossella
Foxx
Franks (AZ)
Frelinghuysen
Gallegly
Garrett (NJ)
Gerlach
Gibbons
Gillmor
Gingrey
Gohmert
Goode
Goodlatte
Gordon
Granger
Graves
Green (WI)
Gutknecht
Hall
Harris
Hart
Hastert
Hastings (WA)
Hayes
Hayworth
Hefley
Hensarling
Herger
Herseth
Higgins
Hobson
Hoekstra
Holden
Hostettler
Hulshof
Hunter
Hyde
Inglis (SC)
Issa
Istook
Jenkins
Jindal
Johnson (CT)
Johnson (IL)
Johnson, Sam
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
Kuhl (NY)
LaHood
Latham
Lewis (CA)
Lewis (KY)
Linder
LoBiondo
Lucas
Lungren, Daniel E.
Mack
Manzullo
Marchant
Marshall
Matheson
McCaul (TX)
McCotter
McCrery
McHenry
McHugh
McIntyre
McKeon
McMorris Rodgers
Melancon
Mica
Michaud
Miller (FL)
Miller (MI)
Miller, Gary
Moore (KS)
Murphy
Musgrave
Myrick
Neugebauer
Northup
Norwood
Nunes
Nussle
Osborne
Otter
Oxley
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Poe
Pombo
Pomeroy
Porter
Price (GA)
Pryce (OH)
Putnam
Ramstad
Regula
Rehberg
Reichert
Renzi
Reynolds
Rogers (AL)
Rogers (KY)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Royce
Ryan (WI)
Ryun (KS)
Salazar
Saxton
Schmidt
Schwarz (MI)
Scott (GA)
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shimkus
Shuster
Simmons
Simpson
Smith (NJ)
Smith (TX)
Sodrel
Souder
Spratt
Stearns
Sullivan
Sweeney
Tancredo
Tanner
Taylor (MS)
Taylor (NC)
Terry
Thomas
Thornberry
Tiahrt
Tiberi
Turner
Upton
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weldon (PA)
Weller
Westmoreland
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (AK)
Young (FL)

NOES—168

Abercrombie
Ackerman
Allen
Baca
Baird
Baldwin
Bartlett (MD)
Becerra
Berkley
Berman
Berry
Bishop (NY)
Blumenauer
Boucher
Brady (PA)
Brown, Corrine
Butterfield
Capps
Capuano
Cardin
Cardoza
Carnahan
Carson
Case
Clay
Clyburn
Conyers
Cooper
Costa
Costello
Crowley
Cummings
Davis (CA)
Davis (IL)
DeFazio
DeGette
Delahunt
DeLauro
Dicks
Dingell
Doggett
Doyle
Emanuel
Engel
Eshoo
Evans
Farr
Fattah
Filner
Frank (MA)
Gilchrest
Gonzalez
Green, Al
Green, Gene
Grijalva
Gutierrez
Harman
Hastings (FL)
Hinchey
Hinojosa
Holt
Honda
Hooley
Hoyer
Inslee
Israel
Jackson (IL)
Jefferson
Johnson, E. B.
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick (MI)
Kind
Kucinich
Langevin
Lantos
Larsen (WA)
Larson (CT)
LaTourette
Leach
Lee
Levin
Lipinski
Lofgren, Zoe
Lowey
Lynch
Maloney
Markey
Matsui
McCarthy
McCollum (MN)
McDermott
McGovern
McKinney
McNulty
Meek (FL)
Meeks (NY)
Miller (NC)
Miller, George
Mollohan
Moore (WI)
Moran (KS)
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Ortiz
Owens
Pallone
Pascrell
Pastor
Paul
Payne
Pelosi
Price (NC)
Rahall
Rangel
Reyes
Rothman
Roybal-Allard
Ruppersberger
Rush
Ryan (OH)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Schakowsky
Schiff
Schwartz (PA)
Scott (VA)
Serrano
Sherman
Skelton
Slaughter
Smith (WA)
Snyder
Solis
Stark
Stupak
Tauscher
Thompson (CA)
Thompson (MS)
Tierney
Towns
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Wasserman Schultz
Waters
Watson
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOT VOTING—12

Castle
Cleaver
Davis (FL)
Davis, Tom
Jackson-Lee (TX)
Keller
Lewis (GA)
Meehan
Millender-McDonald
Ney
Radanovich
Strickland

□ 1645

So the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for:

Mr. KELLER. Mr. Speaker, on rollcall No. 491, I voted "aye" and I was here. Apparently, there was a card malfunction and it did not record my vote. Had I been present, I would have voted "aye".

AUTHORIZING THE CLERK TO MAKE CORRECTIONS IN ENGROSSMENT OF H.R. 6166, MILITARY COMMISSIONS ACT OF 2006

Mr. CONAWAY. Mr. Speaker, I ask unanimous consent that in the engrossment of the bill, H.R. 6166, the Clerk be authorized to correct section numbers, punctuation, cross-references, and the table of contents, and to make such other technical and conforming changes as may be necessary to reflect the actions of the House in amending the bill, and that the Clerk be authorized to make the additional technical corrections which are at the desk.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas?

There was no objection.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the Chair will postpone further proceedings today on motions to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 6 of rule XX.

RECORD votes on postponed questions will be taken later today.

NONADMITTED AND REINSURANCE REFORM ACT OF 2006

Mr. OXLEY. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5637) to streamline the regulation of nonadmitted insurance and reinsurance, and for other purposes, as amended.

The Clerk read as follows:

H.R. 5637

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Nonadmitted and Reinsurance Reform Act of 2006''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

SEC. 2. EFFECTIVE DATE.

Except as otherwise specifically provided in this Act, this Act shall take effect upon the expiration of the 12-month period beginning on the date of the enactment of this Act.

TITLE I—NONADMITTED INSURANCE

SEC. 101. REPORTING, PAYMENT, AND ALLOCATION OF PREMIUM TAXES.

(a) HOME STATE'S EXCLUSIVE AUTHORITY.—No State other than the home State of an insured may require any premium tax payment for nonadmitted insurance.

(b) ALLOCATION OF NONADMITTED PREMIUM TAXES.—

(1) IN GENERAL.—The States may enter into a compact or otherwise establish procedures to allocate among the States the premium taxes paid to an insured's home State described in subsection (a).

(2) EFFECTIVE DATE.—Except as expressly otherwise provided in such compact or other procedures, any such compact or other procedures—

(A) if adopted on or before the expiration of the 330-day period that begins on the date of the enactment of this Act, shall apply to any premium taxes that, on or after such date of enactment, are required to be paid to any State that is subject to such compact or procedures; and

(B) if adopted after the expiration of such 330-day period, shall apply to any premium taxes that, on or after January 1 of the first calendar year that begins after the expiration of such 330-day period, are required to be paid to any State that is subject to such compact or procedures.

(3) REPORT.—Upon the expiration of the 330-day period referred to in paragraph (2), the NAIC may submit a report to the Committee on Financial Services and Committee on the Judiciary of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate identifying and describing any compact or other procedures for allocation among the States of premium taxes that have been adopted during such period by any States.

(4) NATIONWIDE SYSTEM.—The Congress intends that each State adopt a nationwide or uniform procedure, such as an interstate compact, that provides for the reporting, payment, collection, and allocation of premium taxes for nonadmitted insurance consistent with this section.

(c) ALLOCATION BASED ON TAX ALLOCATION REPORT.—To facilitate the payment of premium taxes among the States, an insured's home State may require surplus lines brokers and insureds who have independently procured insurance to annually file tax allocation reports with the insured's home State detailing the portion of the nonadmitted insurance policy premium or premiums attributable to properties, risks or exposures located in each State. The filing of a nonadmitted insurance tax allocation report and the payment of tax may be made by a person authorized by the insured to act as its agent.

SEC. 102. REGULATION OF NONADMITTED INSURANCE BY INSURED'S HOME STATE.

(a) HOME STATE AUTHORITY.—Except as otherwise provided in this section, the placement of nonadmitted insurance shall be subject to the statutory and regulatory requirements solely of the insured's home State.

(b) BROKER LICENSING.—No State other than an insured's home State may require a surplus lines broker to be licensed in order to sell, solicit, or negotiate nonadmitted insurance with respect to such insured.

(c) ENFORCEMENT PROVISION.—Any law, regulation, provision, or action of any State that applies or purports to apply to nonadmitted insurance sold to, solicited by, or negotiated with an insured whose home State is another State shall be preempted with respect to such application.

(d) WORKERS' COMPENSATION EXCEPTION.—This section may not be construed to preempt any State law, rule, or regulation that restricts the placement of workers' compensation insurance or excess insurance for self-funded workers' compensation plans with a nonadmitted insurer.

SEC. 103. PARTICIPATION IN NATIONAL PRODUCER DATABASE.

After the expiration of the 2-year period beginning on the date of the enactment of this Act, a State may not collect any fees relating to licensing of an individual or entity as a surplus lines broker in the State unless the State has in effect at such time laws or regulations that provide for participation by the State in the national insurance producer database of the NAIC, or any other equivalent uniform national database, for the licensure of surplus lines brokers and the renewal of such licenses.

SEC. 104. UNIFORM STANDARDS FOR SURPLUS LINES ELIGIBILITY.

A State may not—

(1) impose eligibility requirements on, or otherwise establish eligibility criteria for, nonadmitted insurers domiciled in a United States jurisdiction, except in conformance with section 5A(2) and 5C(2)(a) of the Non-Admitted Insurance Model Act; and

(2) prohibit a surplus lines broker from placing nonadmitted insurance with, or procuring nonadmitted insurance from, a nonadmitted insurer domiciled outside the United States that is listed on the Quarterly Listing of Alien Insurers maintained by the International Insurers Department of the NAIC.

SEC. 105. STREAMLINED APPLICATION FOR COMMERCIAL PURCHASERS.

A surplus lines broker seeking to procure or place nonadmitted insurance in a State for an exempt commercial purchaser shall not be required to satisfy any State requirement to make a due diligence search to determine whether the full amount or type of insurance sought by such exempt commercial purchaser can be obtained from admitted insurers if—

(1) the broker procuring or placing the surplus lines insurance has disclosed to the exempt commercial purchaser that such insurance may or may not be available from the admitted market that may provide greater protection with more regulatory oversight; and

(2) the exempt commercial purchaser has subsequently requested in writing the broker to procure or place such insurance from a nonadmitted insurer.

SEC. 106. GAO STUDY OF NONADMITTED INSURANCE MARKET.

(a) IN GENERAL.—The Comptroller General of the United States shall conduct a study of the nonadmitted insurance market to determine the effect of the enactment of this title on the size and market share of the nonadmitted insurance market for providing coverage typically provided by the admitted insurance market.

(b) CONTENTS.—The study shall determine and analyze—

(1) the change in the size and market share of the nonadmitted insurance market and in