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2 MARKUP OF: H.RES. 920, DIRECTING THE  
3 ATTORNEY GENERAL TO TRANSMIT TO THE HOUSE OF  
4 REPRESENTATIVES ALL INFORMATION IN THE  
5 ATTORNEY GENERAL'S POSSESSION REGARDING  
6 CERTAIN MATTERS PERTAINING TO DETAINEES HELD  
7 AT NAVAL STATION, GUANTANAMO BAY, CUBA WHO  
8 ARE TRANSFERRED INTO THE UNITED STATES  
9 December 9, 2009  
10 House of Representatives,  
11 Committee on the Judiciary,  
12 Washington, D.C.

13 The committee met, pursuant to call, at 10:03 a.m., in Room  
14 2141, Rayburn House Office Building, Hon. John Conyers  
15 [chairman of the committee] presiding.

16 Present: Representatives Conyers, Berman, Nadler,  
17 Scott, Watt, Lofgren, Jackson Lee, Waters, Delahunt, Wexler,  
18 Cohen, Johnson, Pierluisi, Quigley, Chu, Gutierrez, Gonzalez,  
19 Schiff, Sanchez, Wasserman Schultz, Maffei, Smith, Coble,  
20 Gallegly, Lungren, Issa, Forbes, King, Franks, Gohmert,  
21 Jordan, Poe, Chaffetz, Rooney, and Harper.

22 Staff present: Perry Apelbaum, Staff Director/Chief  
23 Counsel; Ted Kalo, General Counsel/Deputy Staff Director;  
24 George Slover, Legislative Counsel/Parliamentarian; Sean  
25 McLaughlin, Minority Chief of Staff/General Counsel; Allison  
26 Halataei, Minority Deputy Chief of Staff/Parliamentarian; and  
27 Anita L. Johnson, Clerk.

28 Chairman Conyers. [Presiding.] Good morning.

29 Committee will come to order.

30 Clerk will call the roll.

31 The Clerk. Mr. Conyers?

32 Chairman Conyers. Present.

33 The Clerk. Mr. Berman?

34 [No response.]

35 Mr. Boucher?

36 [No response.]

37 Mr. Nadler?

38 [No response.]

39 Mr. Scott?

40 [No response.]

41 Mr. Watt?

42 [No response.]

43 Ms. Lofgren?

44 [No response.]

45 Ms. Jackson Lee?

46 [No response.]

47 Ms. Waters?

48 [No response.]

49 Mr. Delahunt?

50 [No response.]

51 Mr. Wexler?

52 [No response.]

53 Mr. Cohen?  
54 [No response.]  
55 Mr. Johnson?  
56 [No response.]  
57 Mr. Pierluisi?  
58 [No response.]  
59 Mr. Quigley?  
60 [No response.]  
61 Ms. Chu?  
62 [No response.]  
63 Mr. Gutierrez?  
64 [No response.]  
65 Ms. Baldwin?  
66 [No response.]  
67 Mr. Gonzalez?  
68 [No response.]  
69 Mr. Weiner?  
70 [No response.]  
71 Mr. Schiff?  
72 [No response.]  
73 Ms. Sanchez?  
74 [No response.]  
75 Ms. Wasserman Schultz?  
76 [No response.]  
77 Mr. Maffei?

78 [No response.]  
79 Mr. Smith?  
80 [No response.]  
81 Mr. Goodlatte?  
82 [No response.]  
83 Mr. Sensenbrenner?  
84 [No response.]  
85 Mr. Coble?  
86 [No response.]  
87 Mr. Lungren?  
88 [No response.]  
89 Mr. Issa?  
90 [No response.]  
91 Mr. Forbes?  
92 [No response.]  
93 Mr. King?  
94 [No response.]  
95 Mr. Franks?  
96 [No response.]  
97 Mr. Gohmert?  
98 [No response.]  
99 Mr. Jordan?  
100 [No response.]  
101 Mr. Poe?  
102 [No response.]

103 Mr. Chaffetz?

104 [No response.]

105 Mr. Rooney?

106 [No response.]

107 Mr. Harper?

108 [No response.]

109 Mr. Scott?

110 [No response.]

111 Mr. Gonzalez?

112 [No response.]

113 Mr. Johnson?

114 [No response.]

115 Mr. Jordan?

116 [No response.]

117 Mr. Schiff?

118 [No response.]

119 Mr. Nadler?

120 [No response.]

121 Mr. Watt?

122 [No response.]

123 Chairman Conyers. Committee will come to order.

124 Welcome, everyone. I would like to call up the first  
125 item on our agenda, H.Res. 920, a resolution of inquiry by  
126 our friend, Mr. Smith.

127 Clerk will report the bill.

128           The Clerk. H.Res. 920, resolution directing the  
129 attorney general to transmit to the House of Representatives  
130 all information in the attorney general's possession  
131 regarding certain matters pertaining to detainees held at  
132 Naval Station, Guantanamo Bay, Cuba who are transferred into  
133 the United States.

134           [The bill follows:]

135 \*\*\*\*\* INSERT \*\*\*\*\*

136 Chairman Conyers. Without objection, the resolution  
137 considered read and open for amendment at any point.

138 I want to thank all of our friends on the committee for  
139 being here today to get us started. The resolution of  
140 inquiry directs the attorney general to produce legal  
141 documents and security information regarding the possible  
142 transfer of Guantanamo detainees to New York for trial.

143 The underlying subject to the resolution is quite  
144 important: closing the Guantanamo detention camp and  
145 bringing the 9/11 plotters to justice as soon as possible.

146 Eight years after these attacks, it is something of an  
147 embarrassment that these individuals still have not been  
148 tried for their acts. I applaud the attorney general for his  
149 decision to bring these prosecutions. And so I understand my  
150 friend, the ranking member's, interest in the subject.

151 I recommend that we adversely report this resolution to  
152 the House. Why? Because leaders and experts of both parties  
153 agree: It is critical to close the Guantanamo Bay detention  
154 camp. It is a blight on our national reputation, a serious  
155 impediment to winning allies in the war on terror.

156 Thus, our previous president, Bush, said in 2006 that,  
157 "I would like to end Guantanamo." And some detainees held  
158 there, again, "need to be tried in the U.S. courts." I hope  
159 somebody asks me for a citation for that.

160 General Petraeus said in May of this year that "closure



161 in a responsible manner, I think, sends an important message  
162 to the world."

163       General Colin Powell said in 2007, "Guantanamo has  
164 become a major, major problem. And if it were up to me, I  
165 would close Guantanamo not tomorrow, but this afternoon. And  
166 I would not let any of those people go. I would simply move  
167 them to the United States and put them into our federal legal  
168 system," end quotation.

169       So, my colleagues, in my opinion, we need to be closing  
170 Guantanamo more quickly, not hampering the effort, which it  
171 seems to me this resolution might do. Now, in my opinion,  
172 this resolution is unnecessary and burdensome because the  
173 administration has already been forthcoming with the  
174 requested information.

175       The attorney general, the director of the FBI, the head  
176 of the DOJ national security division, the general counsel of  
177 the Department of Defense have all testified before this  
178 committee and many others on these matters this year.

179       In response to a request from Mr. Nadler of New York,  
180 the chairman of Constitution, the department recently  
181 provided the committee with its written legal analysis of  
182 baseline due process protections that would apply to military  
183 commission proceedings whether held in the United States or  
184 Guantanamo Bay.

185       And so, because the administration has already been

186 responsive in providing relevant information, the proposed  
187 resolution is inappropriate.

188         We should recognize that in addition to this  
189 administration, the administration is bound by statute to  
190 provide a detailed classified report to Congress 45 days  
191 before any Guantanamo detainee is transferred to the United  
192 States for trial.

193         This report must include a risk analysis and steps taken  
194 to mitigate any risk, a legal analysis, and a statement of  
195 cost. It must include a classified certification, including  
196 supporting documentation that the individual poses little or  
197 no national security risk, which must be further transmitted  
198 to the state governor 14 days before any actual transfer.

199         And so this report will contain the relevant information  
200 that is requested by the resolution before us today. In  
201 addition, starting this past August, the administration has  
202 been required to provide a classified report to Congress  
203 every 90 days regarding on the measures taken to transfer  
204 Guantanamo detainees.

205         Where the executive and the legislative branches have  
206 reached such a detailed agreement concerning what information  
207 should be provided to Congress. That agreement should  
208 govern, not resolutions of inquiry. And so for these  
209 reasons, I recommend that the vote to adversely report H.Res.  
210 920.

211 I am pleased to recognize my friend, Lamar Smith,  
212 ranking member.

213 Mr. Smith. Thank you, Mr. Chairman. And, Mr. Chairman,  
214 thank you for having this markup, as well.

215 One year ago, President Obama made a decision to close  
216 Guantanamo Bay and transfer, release and relocate more than  
217 200 of the world's most dangerous terrorist suspects. The  
218 decision was not based on intelligence information or  
219 national security considerations. Rather, the decision to  
220 close Guantanamo Bay was based on an ill-advised campaign  
221 promise.

222 This campaign promise has since become a public policy  
223 that endangers American lives. There is no good reason to  
224 close Guantanamo Bay. The American people recognize this.  
225 That is why they overwhelmingly oppose closing the facility  
226 and bringing terrorists to the United States.

227 Despite clear opposition from the American people, the  
228 Obama administration is moving forward with another ill-  
229 advised policy, bringing terrorists to the U.S. for  
230 prosecution. Unfortunately, this decision appears to be  
231 based on the liberal ideology that terrorists deserve the  
232 same rights as citizens. Never before in U.S. history has an  
233 enemy combatant who is caught on the battlefield fighting and  
234 killing Americans been tried in a U.S. civilian court.

235 Importing terrorists for purposes of criminal

236 prosecution grants them more constitutional rights. Once on  
237 U.S. soil, terrorists can argue for additional rights that  
238 may make it harder for prosecutors to obtain a conviction.  
239 9/11 mastermind Khalid Sheikh Mohammed, or KSM, recognized  
240 this advantage when he was first captured in 2003. According  
241 to President Clinton's CIA director, George Tenet, KSM said,  
242 "I will talk to you guys after I get to New York and see my  
243 lawyer."

244 But he never got to New York, and he wasn't read any  
245 Miranda rights. His interrogation went forward whether he  
246 wanted it to or not. As a result, Tenet said the information  
247 we obtained from him saved lives and helped combat Al Qaida.

248 KSM is not a common criminal who committed a homicide on  
249 the streets of New York City. He is an enemy combatant who  
250 committed an act of war against the United States, killing  
251 thousands of innocent Americans. He and other 9/11  
252 conspirators should be treated as enemies of America, not  
253 everyday criminals. They should be tried in military  
254 commissions at Guantanamo Bay.

255 During testimony before the Senate Judiciary Committee,  
256 Attorney General Eric Holder said he believes a U.S. court,  
257 rather than a military commission, gives the government its  
258 best chance for success. This is simply contrary to  
259 commonsense.

260 A military commission trial would take half as long, be

261 more likely to succeed, and be less risky for the American  
262 people. And in the case of the 9/11 conspirators, there was  
263 already a guaranteed success. Before President Obama  
264 announced his plan to close Gitmo, KSM and his co-  
265 conspirators planned to plead guilty to charges and proceed  
266 to execution, but the Obama administration decided to forego  
267 the military commissions, giving the 9/11 conspirators a  
268 second chance.

269 Now, to no one's surprise, KSM and the others are  
270 expected to plead not guilty to forthcoming charges in New  
271 York, creating a public platform for the 9/11 terrorists to  
272 advertise their anti-American propaganda around the world.

273 By trying the terrorists in civilian court, the  
274 administration is granting the 9/11 conspirators rights far  
275 beyond those provided under the Geneva Conventions, namely,  
276 the full rights of domestic criminal defendants. That is why  
277 we are considering this resolution of inquiry today, to  
278 request Justice Department documents that would inform  
279 Congress what extra rights courts will grant terrorists who  
280 are brought to the U.S. for criminal prosecution.

281 This resolution also requests documents relating to the  
282 detention, transportation and incarceration of these  
283 terrorists before, during and after the trial.

284 The Obama administration has banned the terms "war on  
285 terror" and "enemy combatant." Maybe the administration

286 doesn't see the distinction between terrorists and common  
287 criminals, but the American people certainly do.

288 I urge my colleagues to vote in support of this  
289 resolution of inquiry.

290 And, Mr. Chairman, I will yield back.

291 Chairman Conyers. Thank you, Mr. Smith.

292 The chair recognizes Howard Coble, the distinguished  
293 gentleman and veteran of the committee, from North Carolina.

294 Mr. Coble. Thank you, Mr. Chairman, for elevating me to  
295 the distinguished category. I appreciate that.

296 Mr. Chairman, I move to strike the last word.

297 Chairman Conyers. The gentleman is recognized.

298 Mr. Coble. Mr. Chairman, we have no reason to believe  
299 that returning to pre-9/11 mentality will make Americans  
300 safer. The Justice Department's press release announced the  
301 guilty plea of Ali Saleh Kahlah al-Marri. Mr. Chairman, my  
302 pronunciation is probably flawed, but he was a terrorist sent  
303 to the United States by Al Qaida to carry out a second wave  
304 of the mass-murder attacks, said that his sentence of up to  
305 15 years in prison reflects "what we can achieve when we have  
306 faith in our criminal justice system."

307 In the 1996 prosecution arising out of the first attacks  
308 on the World Trade Center, the least culpable defendant was a  
309 man named Fadel Al Mugati, a Sudanese militant who played a  
310 role, but not the lead role in the attacks. After being

311 convicted at trial, he was sentenced to 25 years  
312 imprisonment.

313       In contrast with al-Marri, who is a longtime member of  
314 Al Qaida since 1998, who reported to Al Qaida's highest  
315 command and who was sent to the United States prior to 9/11,  
316 because Al Qaida knew it would be more difficult for him to  
317 enter after the attacks, with instructions to lay low, study  
318 the feasibility of various types of mass murder attacks, and  
319 await further instructions to strike, al-Marri only faces a  
320 maximum 15-year sentencing, only 15 years, and how this is  
321 supposed to reflect the efficacy of our criminal justice  
322 system, I don't know.

323       This is not a success. I think it is a failure. As the  
324 Justice Department cannot accept this as a failure, then the  
325 terrorists, it seems to me, are probably going to enjoy  
326 shorter sentences. Why after knowing that al-Marri is only  
327 facing 15 years would the administration provide a criminal  
328 trial for the 9/11 terrorists?

329       We need to know and should demand to know why the  
330 administration would take risks prosecuting the war on terror  
331 in ordinary criminal court, particularly when we know that  
332 they are probably ill conceived.

333       H.Res., Mr. Chairman, 920 is perfectly straightforward  
334 and should not be opposed. We deserve to know why the 9/11  
335 terrorists are receiving federal criminal trials. And I

336 thank the chairman and yield back my time.

337 Chairman Conyers. Thank you, Howard Coble.

338 The chair recognizes former mayor and distinguished  
339 attorney Elton Gallegly, of California.

340 Mr. Gallegly. Wow. I appreciate that introduction, Mr.  
341 Chairman. And thank you for holding this hearing today.

342 Mr. Chairman, I stand strongly in opposition to the  
343 decision to try Mohammed Sheikh—or Khalid Sheikh Mohammed and  
344 four other 9/11 terrorists in New York City. Leaders from  
345 both the Democratic and Republican Parties, including  
346 Governor David Paterson and former Mayor Rudy Giuliani, have  
347 expressed concern about how this trial will affect the  
348 residents of the city, New York City.

349 During the trial of Zacarias Moussaoui, residents of  
350 Alexandria, Virginia, were subjected to police snipers  
351 stationed on rooftops, bomb-sniffing dogs, identification  
352 checks, and heavily armed patrols. Duplicating this security  
353 in the much larger city of New York will impose enormous  
354 costs to the taxpayers, according to Senator Schumer, more  
355 than \$75 million, but even more importantly, subject the  
356 people of New York to more risk.

357 My concern is not only with the terrorists escaping  
358 custody. While I have great confidence in our law  
359 enforcement personnel, my primary concern is with the threat  
360 imposed to New York City by other terrorists who could try



361 and use this trial as a showcase for another attack on our  
362 country.

363         Just weeks ago, the federal authorities stopped a new  
364 terrorist attempt to attack New York City. It would be naive  
365 to presume that this trial will not provide an added  
366 incentive for violent response from Al Qaida members and  
367 sympathizers. And as a result of this, I would urge my  
368 colleagues to support—strong support for this resolution.

369         I yield back.

370         Chairman Conyers. Thank you, Elton Gallegly.

371         I am pleased now to turn to the gentleman from North  
372 Carolina, distinguished leader in this committee and the  
373 Financial Services Committee, Mel Watt.

374         Mr. Watt. Thank you, Mr. Chairman. I move to strike  
375 the last word.

376         Chairman Conyers. Gentleman is recognized.

377         Mr. Watt. I have to confess, Mr. Chairman, that one of  
378 the most unseemly and insane things I have heard is the  
379 proposition that we shouldn't be trying the folks who were at  
380 Guantanamo in the United States, we can't secure them, we  
381 can't protect our American public from them, even though we  
382 have them incarcerated. That just doesn't—that has never  
383 made any sense to me.

384         And I don't know how my colleagues have gotten on this  
385 notion that, if we are not going to try them here, where are

386 we going to try them? We are going to send them to some  
387 other country and try them? We are going to keep them at  
388 Guantanamo for the next 900 years without giving them a  
389 trial? What is this?

390       And then, to hear my colleagues, both Mr. Smith and my  
391 colleague from North Carolina, suggest that somehow the  
392 Judiciary Committee of the House of Representatives of the  
393 United States ought be more concerned about undermining an  
394 advantage that we would have by maintaining these folks at  
395 Guantanamo, as opposed to creating a forum or having a forum  
396 in which justice can be done, which is what the Judiciary  
397 Committee, I thought, was all about, I just don't understand.

398       I mean, I don't understand that, as my good friend from  
399 North Carolina said, that the pre-9/11 mentality was anything  
400 other than providing justice. It wasn't about creating an  
401 unlevel playing field to try people. Our Judiciary Committee  
402 has always been about providing due process and a fair  
403 process that gets to justice and the results that the facts  
404 demand, not providing an advantage to the United States or  
405 the prosecutor or the defendant. It is about creating both  
406 the appearance and the actuality of fairness.

407       I can't get my mind wrapped around this notion that my  
408 colleagues are asserting here, that the Judiciary Committee  
409 of the United States House of Representatives ought be, as  
410 Mr. Smith said, trying to maintain an advantage for

411 prosecution. I just don't understand how, if we can't assert  
412 due process and justice and fairness, and we can't defend it,  
413 I don't know who else in Congress, in the Senate, in the  
414 public, in the courts, if we can't do it in the Judiciary  
415 Committee, I don't know who is supposed to do that.

416       So this notion that we should be insecure about our own  
417 justice system is an alien notion to me. And I just—I am not  
418 sure how much that has to do with the resolution itself,  
419 except that we are bringing it here, I believe, so we can  
420 second-guess everything that our country stands for and that  
421 our Judiciary Committee stands for.

422       And in light of that, I have to oppose the resolution.  
423 And I yield back.

424       Chairman Conyers. I thank you, Mr. Watt.

425       We now turn to Mr. Franks, Trent Franks from the state  
426 of Arizona, and I am pleased to yield to you now and  
427 recognize you.

428       Mr. Franks. Well, thank you, Mr. Chairman. Mr.  
429 Chairman, I also move to strike the last word.

430       Chairman Conyers. Gentleman is recognized.

431       Mr. Franks. Mr. Chairman, I have to speak on behalf of  
432 Resolution 920 being passed out favorably, because in the  
433 wake of the Fort Hood terrorist attack that killed 14  
434 innocent and unsuspecting Americans, including one unborn  
435 child, President Obama's administration has granted Khalid

436 Sheikh Mohammed, the mastermind of the 9/11 terrorist attack  
437 and his co-conspirators, the privilege of an American civil  
438 trial just blocks from where the Twin Towers once stood.

439       Mr. Chairman, this sends an astonishing message to  
440 terrorists the world over, and that is, if you commit acts of  
441 war on American soil, you will gain both the constitutional  
442 protections and the worldwide media platform of being tried  
443 in America's federal courts.

444       Mr. Chairman, it is the terrorists that would gain the  
445 platform—as Mr. Watt was concerned that somehow we needed the  
446 platform, it is the terrorists that gain the platform. Why  
447 he has a difficulty wrapping his mind around that is—it  
448 astonishes me, as well.

449       It escapes me as to how we could possibly write the  
450 script more favorably to terrorists or less favorably to  
451 America. It is also essentially important that we pass this  
452 resolution out of committee, Mr. Chairman, because the House  
453 failed to pass H.R. 2294, the Keep Terrorists Out of America  
454 Act. That legislation was introduced on May 7th by Minority  
455 Leader John Boehner and the rest of the Republican  
456 leadership, including Ranking Member Lamar Smith.

457       The Keep Terrorists Out of America Act would have  
458 required the president to notify Congress 60 days before  
459 transport—transfer or release of a Gitmo detainee occurs and  
460 to certify that such a transfer or release will not result in

461 the release of any detainee into the United States, adversely  
462 affect the prosecution of any detainee, or otherwise pose a  
463 security risk to the United States.

464       The bill also requires that the president give Congress  
465 the reasons behind such certifications. In addition, the  
466 bill requires the president to certify to state governors and  
467 legislatures that the transferred or released detainee will  
468 not pose a security risk to the United States.

469       Finally, Mr. Chairman, the bill requires the government  
470 and the state legislature to consent to any release or  
471 transfer of a Gitmo detainee into their state before it can  
472 occur.

473       Now, the current administration touts itself as the most  
474 transparent in history. But, Mr. Chairman, the president has  
475 failed more than 50 times so far to abide by that promise to  
476 disclose things such as earmarks or to post bills on the  
477 Internet 5 days before he signs them into law. He has  
478 refused to release government records allowing even an  
479 independent assessment of things like the Cash for Clunkers  
480 program. He has failed to disclose how the \$787 billion in  
481 bailout funds are being used by banks, the value of the  
482 assets that the Treasury Department has accumulated under the  
483 program, and where taxpayer money is ultimately going, among  
484 other things.

485       And now he has refused to provide information to the

486 American people and their elected leaders in Congress and the  
487 states regarding the important safety issues surrounding the  
488 announced trial of the 9/11 terrorists in the heart of New  
489 York City. He has failed to provide that information before  
490 letting his attorney general make that fateful decision.

491       And now we see that the attorney general himself at a  
492 recent Senate hearing admitted that he was unaware that using  
493 federal courts to try known terrorists captured overseas in a  
494 time of war was unprecedented in American history.

495       Well, Mr. Chairman, this committee and this Congress  
496 must force an end to this stonewalling. And you can start by  
497 favorably reporting out this resolution and by passing the  
498 Keep Terrorists Out of America Act.

499       And I thank you, Mr. Chairman. I yield back.

500       Chairman Conyers. All right. Thank you so much, Mr.  
501 Franks?

502       Ms. Jackson Lee. Mr. Chairman?

503       Chairman Conyers. The chair recognizes the  
504 distinguished chair of the Constitution Committee, the  
505 gentleman from New York, Jerrold Nadler.

506       Mr. Nadler. Thank you, Mr. Chairman.

507       Let me start by observing that the genuineness of the  
508 concerns I hear expressed by our friends on the other side  
509 here might be more evident had they expressed any concerns  
510 when Zacarias Moussaoui was tried a few blocks from here

511 during the latter days of the Bush administration. We heard  
512 no objections at that time, and I fail to see any difference  
513 whatsoever.

514 But be that as it may, I think the Bush administration  
515 did the right thing in trying him here in Washington, and I  
516 think the Obama administration is doing the right thing in  
517 bringing these alleged terrorists to trial in my district in  
518 New York. The courthouse is in my district, as is the World  
519 Trade Center.

520 Mr. Lungren. Would the gentleman yield?

521 Mr. Nadler. No, I won't yield for the moment.

522 The resolution says that you want any legal guidance or  
523 recommendations made since January 20th, only since January  
524 20th, because we obviously don't care about what the Bush  
525 administration said, regarding additional legal rights or  
526 protections that detainees at Guantanamo would have here.

527 Well, the Supreme Court decided, as some people may  
528 recall, that contrary to the Bush administration's theory  
529 that Guantanamo was a legal black hole, and that people there  
530 had no constitutional rights, which is why it was  
531 established, that Guantanamo is effectively under the control  
532 of the United States, and that there is no difference—no  
533 significant difference between the constitutional rights  
534 enjoyed by someone at Guantanamo or someone in Florida or New  
535 York. So there is no difference there. And so there are no—

536 I assume are no memos other than those saying, "Hey, read the  
537 Supreme Court decision," number one.

538         Number two, we don't grant constitutional rights to  
539 terrorists. We observe our Constitution and our traditions  
540 developed over hundreds of years as to the procedural  
541 safeguards necessary to determine accurately who is guilty  
542 and who is innocent and to make sure that we don't persecute  
543 innocent people for political or other reasons with respect  
544 to anybody accused of any crime.

545         And what some people seem to be saying is that people  
546 accused of certain heinous crimes, terrorism, shouldn't get  
547 constitutional rights, because they don't deserve it. Well,  
548 someone who has raped someone doesn't "deserve"  
549 constitutional rights, but we don't string them up. We first  
550 have a fair trial and then decide an appropriate punishment,  
551 if they are guilty.

552         Now, the Bush administration, I am aware, said  
553 repeatedly that the only people at Guantanamo were the worst  
554 of the worst, and yet they obviously didn't believe that,  
555 either, because they released 500 of the 700 people who were  
556 there, having determined presumably that those 500 weren't  
557 guilty or weren't in danger, although they made some  
558 mistakes, obviously.

559         Now, I would be the first to agree that some of the  
560 people of Guantanamo are very bad people, are the worst of



561 the worst, some of them. But I also note that, after the  
562 Supreme Court declared that people deserve the right of  
563 habeas corpus, even at Guantanamo, and other constitutional  
564 rights, of the first 31 cases to come before a federal court,  
565 28 were ordered released, even on the basis of a habeas  
566 corpus, where the standard is, is there any reason to believe  
567 that there is a reason to hold this person? Is there any  
568 scintilla of evidence that this person committed a crime or  
569 did something wrong? Twenty-eight out of thirty-one, the  
570 answer was no.

571       So, obviously, somebody did a very poor job of deciding  
572 who went to Guantanamo, and one can't assume that everyone  
573 there is dangerous or guilty. And to determine who is and  
574 who isn't, they are deserving—not that they are deserving.  
575 We are deserving. We are deserving. In our civilization, in  
576 our country, in our traditions, we are deserving of obeying  
577 our laws and our constitutional traditions, and that means  
578 that everybody gets the same right, whether they are in  
579 Guantanamo, or in New York, or anywhere else, and there is no  
580 issue of safety. People don't escape from supermax prisons.

581       And, yes, I know that New York is a terrorist target  
582 and, God willing, our defenses will hold off terrorist  
583 attacks. But it is no more or less a terrorist target  
584 because of a trial there. If the terrorists can hit us, they  
585 will. If they can't, if we can prevent it, they won't. But

586 they are not going to be able to do it more or less because  
587 of a terrorist trial.

588         So I would say, let us vindicate our constitutional  
589 traditions. Let us vindicate our traditions of liberty, our  
590 traditions that make us different from the terrorists, and do  
591 exactly what we are doing.

592         I thank you. I yield back.

593         Chairman Conyers. Thank you, Mr. Nadler.

594         The chair is pleased to recognize the distinguished  
595 gentleman from California, a former state attorney general,  
596 Daniel Lungren.

597         Mr. Lungren. Thank you very much, Mr. Chairman.

598         I would just say I am sorry the gentleman from New York  
599 did not yield to me, since he questioned the motivation and  
600 integrity of the members on this side with his language,  
601 which could have been taken down.

602         I would say to the gentleman, there is a distinct  
603 difference between what we are talking about now, what  
604 happened with Mr. Moussaoui, a small little factual  
605 distinction, that is, one was arrested on American soil. The  
606 other was not. That is an essential difference that has been  
607 recognized. That is the battlefield versus American soil  
608 since the beginning of this republic.

609         George Washington, Abraham Lincoln, Franklin Delano  
610 Roosevelt, President Truman, President Eisenhower, while he

611 was the supreme allied commander, all supported the idea of  
612 military tribunals. To suggest that somehow we need to beat  
613 our chests and show that we are Americans and believe in our  
614 values by dismissing that historical record and saying only  
615 if we bring him to civilian trials on U.S. territory is  
616 absolutely nonsense.

617 Now, the gentleman is entitled to his opinion. He is  
618 not entitled to his facts. And he is not entitled to in some  
619 way question the motivation of members on this side.

620 I came to this place—I returned to this place precisely  
621 because of 9/11. I came here to ensure that this country and  
622 this government would not continue with a pre-9/11 attitude,  
623 approach, the idea that we were going to fight terrorism in  
624 the courts rather than on the battlefield, the idea that  
625 somehow criminal laws were sufficient and we didn't need  
626 anti-terrorism laws, the idea that on this very panel, 3  
627 weeks ago, we voted down an extension of the lone wolf  
628 provision because it was said on this dais, well, it has  
629 never been used before. Just hours later, we had a domestic  
630 lone wolf who killed 13 American servicemen and one unborn  
631 child. Well, you know something? It had never happened  
632 before.

633 Now, I am not suggesting that the Patriot Act would have  
634 affected that. What I am suggesting is, that the lone wolf—  
635 the lone wolf reality is something we ought to recognize.

636 And if we suddenly—or not suddenly, over time lose the  
637 urgency of the moment that we had in 9/11 because we haven't  
638 had an attack on our shores, we are not doing a service to  
639 the American people.

640       And, Mr. Chairman, I would say this. Under any other  
641 circumstances, this committee would be demanding the  
642 information. I mean, let's just bring up something. One of  
643 the significant concerns I have with the decision to bring to  
644 New York for a civil trial a number of the terrorists  
645 responsible, allegedly, for planning the 9/11 attacks is a  
646 number of senior Justice Department officials with the  
647 potential for serious conflict or, at the minimum, the  
648 appearance of conflict.

649       We can start with the attorney general himself.  
650 Attorney General Holder worked as a partner at Covington &  
651 Burling here in Washington before becoming attorney general.  
652 If you look at their firm's Web site, it represents 16  
653 detainees at Guantanamo Bay. Deputy Attorney General David  
654 Ogden was a partner at WilmerHale, a firm whose Web site  
655 currently boasts about its representation of multiple  
656 detainees at Guantanamo Bay.

657       Associate Attorney General Tom Perrelli was a partner at  
658 Jenner & Block in D.C. This firm has a Web site boasting of  
659 the firm's representation of multiple detainees. In Mr.  
660 Perrelli's case, the conflicts are more real than apparent,

661 as he has had to recuse himself from 39 cases involving  
662 terrorism-related detainees.

663         As a professor at Georgetown, Principal Deputy Solicitor  
664 General Neal Katyal represented many detainees in  
665 groundbreaking cases before the Supreme Court. He is a  
666 distinguished lawyer, but he is significantly responsible for  
667 getting us to the point at which these detainees enjoy  
668 certain constitutional rights. And he has been committed to  
669 get many of these individuals as many rights as possible.

670         Assistant Attorney General Tony West, who I supported  
671 for his position, who runs the civil division, which defends  
672 the government and civil claims brought by the detainees,  
673 including habeas corpus, was a partner at Morrison &  
674 Foerster, which represents a Guantanamo Bay detainee in a  
675 habeas case brought in federal court in Washington.

676         I do not have the complete list of lower-level political  
677 appointees or of other possible career appointees who might  
678 have had some responsibility for terrorism prosecutions or  
679 policy and who have been hired by the department since  
680 President Obama took office. But I note that serving under  
681 deputy attorney general are three former WilmerHale lawyers,  
682 Stuart Delery, Eric Columbus, and Chad Golder. Serving with  
683 Associate Attorney General Perrelli are former Jenner lawyers  
684 Donald Verrilli and Brian Hauck.

685         Finally, I would like to highlight the department's

686 hiring of Jennifer Daskal, a harsh critic of U.S. policy  
687 towards detainees, as a senior adviser in the department's  
688 national security division, where she serves on a task force  
689 for detainee policy.

690       Mr. Chairman, if we were dealing with any other subject  
691 matter and you had this list of individuals in high decision-  
692 making positions in an administration or in a department  
693 which made a decision concerning the treatment of subjects,  
694 whose law firms had and continue to have representation of  
695 the subjects we are talking about, we would be here saying,  
696 "Shouldn't we know the facts? Shouldn't we know how the  
697 decision was made? And shouldn't we above all be obligated  
698 to remove any suggestion of the potential of conflict or the  
699 appearance of conflict?"

700       And yet here, with our national security at stake, we  
701 have a scene from a cartoon where only—where one only hears  
702 the crickets chirping. Mr. Chairman, we have a  
703 responsibility. I will not question the motivation or  
704 integrity or assume motivation on the part of those who do  
705 not support this particular request for inquiry, but it just  
706 seems to me, we ought to sit down and think about this and  
707 remove the actual question of the subject matter away from it  
708 and just say, if this were any other situation dealing with  
709 all of these potential conflicts and a decision of this type  
710 had been made, wouldn't we all be clamoring for information

711 so that we could make a judgment with respect to the  
712 appropriateness of this decision?

713         And so with that, Mr. Chairman, I support this  
714 resolution. I would urge my colleagues to do so, as well. I  
715 yield back with respect for all members of this panel, no  
716 matter what position they have expressed or no matter what  
717 position they have on the final resolution.

718         Chairman Conyers. Thank you, Mr. Dan Lungren.

719         I now turn to the chairman of the Subcommittee on Crime,  
720 the distinguished gentleman from Virginia, Bobby Scott, and  
721 recognize him.

722         Mr. Scott. Thank you, Mr. Chairman.

723         Mr. Chairman, this resolution, if adopted, would require  
724 the attorney general of the Department of Justice to spend  
725 hours complying with a—essentially a subpoena which is  
726 obviously over broad. It requires the production of any  
727 document, record, memo, correspondence, or any communication  
728 of the Department of Justice, including the Office of  
729 Solicitor General, or any portion of such communication that  
730 refers or relates to—and then go into any legal guidance made  
731 since January 20th regarding—on and on and on—or pretrial  
732 detention.

733         The Department of Justice would have to spend hours  
734 trying to figure out how to comply with this. We are able to  
735 try criminals and protect the public. The Judiciary

736 Committee does not need to raise the—or does not need to  
737 raise the political stature of this or politicize the  
738 details. We are not questioning the motives of the sponsors  
739 of this, just the impact of passage of the resolution. It  
740 just raises the political nature of this and doesn't really  
741 add any light to the subject.

742       So I would hope that we would report—I would support the  
743 motion to report the resolution with a negative  
744 recommendation.

745       Chairman Conyers. Thank you, Chairman Scott.

746       I am pleased now to recognize the distinguished  
747 gentleman from Virginia, Randy Forbes.

748       Mr. Forbes. Thank you, Mr. Chairman.

749       And, Mr. Chairman, I want to thank you for just bringing  
750 this resolution forward. I think it is a great dividing line  
751 between both of our sides. I think it is a great dividing  
752 line of the American people, and I think the debate has shown  
753 the clear differences between our two sides.

754       I want to begin with the comments my good friend from  
755 North Carolina made when he said he just couldn't wrap his  
756 mind around the concept that we would be concerned over here  
757 about the security of individuals in our court system and in  
758 our jails here in the United States. The reason it is so  
759 difficult to wrap your mind around that is because none of us  
760 have ever argued that.



761 We have said that very clearly over and over and over  
762 and over again in here. We don't question that we can hold  
763 prisoners, be they terrorists or rapists, as the gentleman  
764 from New York might have mentioned, in our court system.  
765 What we are concerned about is a whole host of other issues,  
766 one being the security and the target we are putting on  
767 individuals' backs who were not in the system, whether they  
768 are in schools, businesses or anything else in that  
769 community.

770 The other thing—when the gentleman from New York  
771 mentioned the fact that he didn't understand the difference  
772 between Moussaoui and these cases, perhaps it is because we  
773 haven't sat down with the real individual who could have told  
774 us those differences, the one person that could walk in here  
775 with more authority than anybody sitting on this committee,  
776 and that is the chief prosecutor who has actually prosecuted  
777 these cases and who has that expertise.

778 And if anyone here has gone down and sat down and talked  
779 with him, I would love for you to raise your hand and say  
780 that anything I am saying is different, but I have. And this  
781 is what he has told us. He has told us very clearly, first  
782 of all, I would suggest the gentleman from New York, when  
783 Moussaoui was arrested, we hadn't even established the  
784 military tribunals and that particularly point in time. One,  
785 we didn't have that choice.

786           The second thing—and this is what the chief prosecutor  
787 was lamenting this decision with such concern about—is he had  
788 worked 18 months on this trial. My friend from Virginia is  
789 concerned about the hours that staff people at Justice might  
790 have to do to get the information the American people need to  
791 make a decision, but we are not at all concerned with the  
792 hours and hours and hours that they have fought to do 56  
793 motions, to do 18 months, stacks of motions to get ready for  
794 trial, and before the president's order, foolish order that I  
795 think it probably was, issued on January 22nd of this year,  
796 to stop those proceedings, the chief prosecutor, not for  
797 political spin, the person that Democrats and Republicans  
798 both think is the best person to prosecute these cases, he  
799 would tell you today as he told me when I traveled and met  
800 with him, he would have had guilty pleas out of every single  
801 one of the 9/11 defendants if he hadn't been ordered to stop  
802 his trial.

803           But we don't care that he will have to start all over  
804 again and bring those—all those motions all over again, all  
805 that effort, all that energy, all that putting of their  
806 families at risk, we don't care about.

807           The second thing, we make statements like there are no  
808 differences in rights in Guantanamo and the rights here.  
809 Clearly, that is not what the case did. And, again, I don't  
810 say that from my opinion; that is what the chief prosecutor

811 has said. He has said that there are huge differences.

812 And one of the things we don't realize when we are  
813 trying a case against an alleged rapist versus a terrorist is  
814 the information you get from a terrorist when you get into  
815 foreign countries. We don't have wiretapping capabilities.  
816 We don't have grand juries over there who can get information  
817 from our foreign enemies. We have sometime military people  
818 who are breaking doors down trying to protect themselves as  
819 they go in. That is a huge difference from when you are  
820 trying an alleged rapist here in the United States.

821 And, Mr. Chairman, I will just say this. My friend from  
822 North Carolina also says, what does America stand for? You  
823 know, America stands for protecting the freedom of innocent  
824 Americans here more than we are going to protect the  
825 terrorists who want to come here from overseas and kill them.  
826 And I think that was what we were trying to do.

827 And the last thing I will close with is this. It is  
828 hard for me to get my mind around, it is hard for the  
829 American people to get their mind around why we are so  
830 anxious to see some of our friends on the other side of the  
831 aisle who are adamant at getting all the information the  
832 terrorists need. They want pictures of the interrogation.  
833 We want all the information about the interrogation. Let's  
834 give it to them.

835 But when it comes to getting the information the

836 American people need to make a decision about what we should  
837 be doing with trying these cases, oh, no, that takes too much  
838 time. We don't want to do that.

839 And I will just close by saying, Mr. Chairman, the  
840 reason this resolution is so important is because, in the  
841 marketplace of ideas, I am convinced truth will win out, but  
842 we have to have a marketplace, and we have to get the  
843 information out so that we can reach that truth. This  
844 resolution helps us do it. I hope we will support it; I hope  
845 we will pass it.

846 And I yield back the balance of my time.

847 Chairman Conyers. Thank you, Randy Forbes.

848 I am now pleased to turn to Sheila Jackson Lee of  
849 Houston, Texas, and recognize her for her comments.

850 Ms. Jackson Lee. Thank you very much, Mr. Chairman.

851 I think what is most difficult for my colleagues on the  
852 other side of the aisle to understand is that we do live by a  
853 very challenging and difficult document. It is a document  
854 that many around the world don't understand, the principles  
855 of democracy and freedom and justice embodied in the  
856 Constitution, a document that many of the founding fathers  
857 sacrificed their lives to be different.

858 We know that it was not as perfect a document as we  
859 would have liked. There were distinguishing factors for  
860 slaves and women, non-land owners. But as perfect a document

861 as it could be about understanding the principles of freedom  
862 and democracy it became.

863         And I think my friends don't understand that that  
864 sometimes is ugly, it is not pretty, and maybe they don't  
865 understand it, but it has been a document that has been our  
866 guidepost and the world has admired now for centuries.

867         I would also say that the history of my friends on the  
868 other side of the aisle is somewhat distorted. The first  
869 terrorist of which we could remember in the recent decades,  
870 something that had never been seen on our soil, was Timothy  
871 McVeigh in Oklahoma, where 165 innocent Americans died, and  
872 my recollection is that all proceedings occurred on the soil  
873 of the United States of America. A terrorist was tried under  
874 the laws of this nation and others who were associated with  
875 that case.

876         So it disturbs me to suggest that we now have a double-  
877 standard. So I agree with my friend from Texas that  
878 transparency is important, and I, frankly, believe that we  
879 have the ability to have transparency. I agree with him, and  
880 I would ask him to support legislation that I have that was  
881 introduced in this Congress that is now bipartisan that deals  
882 with getting information from non-federal or non-public  
883 prisons, those that are private, as well as those that are,  
884 in essence, public prisons.

885         And I would ask the chairman if I could put H.R. 2450

886 into the record to make the statement that all of us agree  
887 with the idea of transparency.

888 Chairman Conyers. Well, without objection, so ordered.

889 [The bill follows:]

890 \*\*\*\*\* INSERT \*\*\*\*\*

891 Ms. Jackson Lee. And so if my good friend wants to have  
892 transparency on items dealing with those who are incarcerated  
893 and would ask that both the federal prisons and non-federal  
894 prisons have the same standards, I would like him to join me  
895 on H.R. 2450, which, by the way, is a bipartisan bill,  
896 Republicans and Democrats, who are supporting that.

897 But if he wants to, in essence, suggest that the only  
898 facility that is legitimate and the only process that is  
899 legitimate is the process that has been described, I take  
900 issue with that. And I would suggest that this resolution is  
901 redundant, because what was scored—or what was secured on the  
902 very issue that is being discussed here today has already  
903 been signed by the president.

904 In an appropriations bill that was signed by the  
905 president in a bill for the Department of Homeland Security,  
906 the following is what has been agreed to already, an  
907 accounting of all the measures taken to transfer each  
908 Guantanamo detainee to the individual's country of  
909 citizenship or another country, a detailed classified plan  
910 regarding the proposed disposition of any Guantanamo detainee  
911 brought to the United States for trial, a copy of a  
912 classified certification to the governor of the receiving  
913 state or the mayor of the District of Columbia that a  
914 Guantanamo prisoner is being transferred to the United  
915 States, that the individual poses little or no security risk

916 to our nation, already in place.

917       So if we are fearful of our own Constitution, democracy,  
918 then who are we? Then we have subjected ourselves to what  
919 the terrorists wanted, frightening you, scaring you of your  
920 own principles.

921       Might I also suggest that this is a bipartisan position,  
922 because I read for you very briefly a letter from Bob Barr,  
923 David Keene, and Grover Norquist, I don't think any less  
924 Republicans than are sitting in this room, and they say, as  
925 it moves to close Guantanamo and develop policies for  
926 handling terrorism suspects going forward, the government  
927 should rely upon our established traditional system of  
928 justice. This includes our system of federal prisons, which  
929 have repeatedly proven they can safely hold persons convicted  
930 of terrorism offenses. We are confident that the government  
931 can preserve national security without resorting to the  
932 sweeping and radical departures from an American  
933 constitutional tradition that has served as effectively—  
934 served us effectively for over 2 years.

935       Mr. Chairman, I doubt that there is any substance to  
936 H.R. 920, though I respect the distinguished gentleman who  
937 has offered it, that would counter these very words. Who are  
938 we to deny our constitutional premise and the belief and the  
939 document that says that we can't uphold a democratic system  
940 of justice that can try terrorists like Timothy McVeigh and



941 the terrorists that are en route to New York City?

942 I believe this resolution is redundant, and I believe  
943 our Constitution is superior, and I would ask my colleagues  
944 to oppose the resolution.

945 I yield back.

946 Chairman Conyers. Thank you, Sheila Jackson Lee.

947 We now turn to another Texan, ranking member of the  
948 Crime Committee and Judiciary, Judge Louie Gohmert, and he is  
949 recognized.

950 Mr. Gohmert. Thank you, Mr. Chairman. I appreciate  
951 that very much.

952 First of all, to help those here who have not been  
953 required to study countless hours of warfare and the history  
954 of warfare, let me acquaint you with some things.

955 First of all, throughout the tradition of the whole  
956 history of mankind, when civilized nations captured  
957 combatants who were at war with that country, they held those  
958 people until their friends admitted they were no longer at  
959 war, and then those prisoners were released, unless it was  
960 suspected that they had committed war crimes, at which time  
961 they were tried before military tribunals for those war  
962 crimes.

963 So when we have our genuineness questioned across the  
964 aisle, which, as I understand, has been ruled as a violation  
965 of the rule, I won't question the other side's genuineness.

966 I believe they are being very genuine.

967       But the trouble is, you have to know the history. And  
968 as Justice Scalia said in the Boumediene case, during the  
969 1995 prosecution of Omar Abdel-Rahman, federal prosecutors  
970 gave the names of 200 unindicted co-conspirators to the blind  
971 sheikh's defense lawyers. That information was in the hands  
972 of Osama bin Laden within 2 weeks.

973       In another case, trial testimony revealed to the enemy  
974 that the United States had been monitoring their cellular  
975 network, whereupon they promptly stopped using it, enabling  
976 more of them to evade capture and continue their atrocities.  
977 Those atrocities are against this nation.

978       As Justice Scalia also pointed out, when we talk about  
979 the history, it was breathtaking, as both Chief Justice  
980 Roberts and Justice Scalia pointed out in their dissent in  
981 the Boumediene case, that the Supreme Court granted these  
982 prisoners—what used to be called enemy combatant, and this  
983 year has been amended to call them alien unprivileged enemy  
984 belligerents.

985       But as they pointed out, this is unprecedented that they  
986 were given habeas corpus rights. As Justice Scalia points  
987 out, he says, in the short term, the decision is devastating.  
988 At least 30 of those prisoners hitherto released from  
989 Guantanamo Bay returned to the battlefield.

990       He also says just granting habeas corpus without moving

991 them from Guantanamo, he says, "It will almost certainly  
992 cause more Americans to be killed. That consequence would be  
993 tolerable if necessary to preserve a time-honored legal  
994 principle to our constitutional republic, but it is this  
995 court's blatant abandonment of such principle that produces  
996 the decision today." That was to grant habeas corpus.

997       This Congress is going further. This administration is  
998 going further. The Congress is implicit in assisting the  
999 administration in allowing these people to be brought to the  
1000 United States. For those who have not gotten the difference,  
1001 McVeigh was an American citizen. He had American citizens'  
1002 rights. Moussaoui was here on American soil. He was  
1003 arrested here.

1004       When people are arrested in America, we have forensic  
1005 vehicles that will go out, gather DNA, gather fingerprints,  
1006 go talk to hundreds and hundreds—

1007       Ms. Jackson Lee. Would the gentleman yield?

1008       Mr. Gohmert. No, I won't. I need my time to counter  
1009 all these false representations that are out there in the  
1010 atmosphere about this situation. There is no precedent, as  
1011 Eric Holder was—he was unable to point one out, because there  
1012 isn't one.

1013       So this is very important. We are witnessing the fall  
1014 of Rome, but it can be changed. When civilizations fail to  
1015 recognize the danger posed by those who want to destroy their

1016 civilization, then they are on their way—of course, for—for  
1017 Rome to fall, they also had to break down the families and  
1018 morality and also vastly overspent. Fortunately, we are okay  
1019 on those bases.

1020       But when you take prisoners to U.S. district court, then  
1021 forensic rules apply, and it will require our soldiers to go  
1022 gather witnesses names on the battlefield of people who are  
1023 shooting at them. We cannot do this. We really need this  
1024 information. And if we have throw out 18 months of work  
1025 toward those prosecutions that were on their way to guilty  
1026 pleas—and, by the way, read Khalid Sheikh Mohammed's own  
1027 pleading. He says, so our religion is a religion of fear and  
1028 terror to the enemies of God, the Jews, Christians and  
1029 Pagans, which, God willing, we are terrorists to the bone, so  
1030 many thanks to God.

1031       They are at war with us. We need to recognize that.  
1032 And we need the information sought here to further protect  
1033 this wonderful republic.

1034       I yield back.

1035       Chairman Conyers. Thank you, Judge Gohmert.

1036       I would like now to turn to my friend, Jim Jordan, of  
1037 Ohio and recognize him at this time.

1038       Mr. Jordan. Thank you, Mr. Chairman.

1039       Mr. Chairman, reporting this resolution favorably is  
1040 particularly important in light of some of the disturbing

1041 comments made by then-Senator Obama regarding Guantanamo Bay  
1042 and other anti-terrorism programs. During an interview with  
1043 ABC News, he said that he thought the appropriate way to deal  
1044 with terrorism was to prosecute terrorists like ordinary  
1045 criminals.

1046       He said, "Let's take the example of Guantanamo. What we  
1047 know is that, in the previous terrorist attacks, for example  
1048 the first attack against the World Trade Center, we were able  
1049 to arrest those responsible, put them on trial, and they are  
1050 currently in U.S. prisons."

1051       But what the president failed to mention that was never  
1052 before in U.S. history have terrorists caught overseas in a  
1053 time of war been granted the full rights of U.S. citizens in  
1054 federal criminal trials, as the previous speaker just pointed  
1055 out. The president and his attorney general are granting  
1056 more rights to terrorists who violate the laws of war by  
1057 targeting innocent civilians than to our soldiers who obey  
1058 the laws of war would receive if captured.

1059       And they are doing so without providing the American  
1060 people with the most basic information about the risks this  
1061 decision poses to them. We are seeking that basic  
1062 information through this resolution of inquiry, and that is  
1063 why it is so important that we pass this resolution.

1064       Further, President Obama is wrong when he says that  
1065 Americans can be fully protected from terrorists by

1066 prosecuting them through the criminal justice system. As  
1067 former terrorism prosecutor Andrew McCarthy has written, the  
1068 criminal law approach to combating terrorism under the  
1069 Clinton administration was a complete disaster.

1070 "During that 8-year period under consideration, the  
1071 virtually exclusive U.S. response to terrorism was criminal  
1072 prosecution. This proved dismally inadequate, particularly  
1073 from the perspective of American national security. The  
1074 period resulted in fewer than 10 major terrorism  
1075 prosecutions."

1076 "Even with the highest conceivable conviction rate,  
1077 fewer than three dozen terrorists were neutralized at a cost  
1078 that was staggering and that continues to be paid, as several  
1079 of these cases remain in appellate or habeas litigation.  
1080 Stopping fewer than three dozen terrorists is a patently  
1081 insufficient bottom line in dealing with a global threat of  
1082 such proportions."

1083 "Put succinctly, where they are the sole or principal  
1084 response to terrorism, trials in the criminal justice system  
1085 inevitably cause more terrorism. They leave too many  
1086 militants in place, and they encourage the notion that the  
1087 nation may be attacked with relative impunity."

1088 The American people deserve a lot more information about  
1089 the attorney general's decision to revert to the criminal law  
1090 approach on the war on terror. And we can help get that

1091 information by favorably reporting out this resolution of  
1092 inquiry, Mr. Chairman.

1093 I yield back my time.

1094 Chairman Conyers. Thank you, Mr. Jordan.

1095 The chair now turns to Judge Ted Poe, of Texas and  
1096 recognize him at this point.

1097 Mr. Poe. Thank you, Mr. Chairman. There are many  
1098 important criminal procedure questions that arise from the  
1099 attorney general's decision, and I am concerned that he has  
1100 not considered the implications of these procedures and his  
1101 decision with the possibility of justice being considered and  
1102 delayed in this case.

1103 I want to address specifically the concept of venue.  
1104 Giving these terrorists constitutional rights, that gives  
1105 them all constitutional rights. And let's start with the  
1106 concept of venue. "Welcome to New York, Now Die," was the  
1107 headline of the New York Post the day after the attorney  
1108 general announced that Khalid Sheikh Mohammed would be tried  
1109 in New York City. "Kill them without a trial, just a bullet  
1110 in the head and say, 'Goodbye.' Why waste taxpayer money?"  
1111 This is from Thomas Pland, a 70-year-old truck driver from  
1112 New York.

1113 Clearly, those statements and others like them are  
1114 admissible on a venue hearing to determine if now the  
1115 defendant on trial could even get a fair trial in New York

1116 City. These statements are certainly no surprise to the  
1117 people of New York City, and I can understand exactly how  
1118 they feel.

1119 Many officials with jurisdiction over the trial have  
1120 even publicly infringed upon the defendant's now right to a  
1121 fair trial in New York with their comments. When Attorney  
1122 General Holder was asked during the Senate hearing what would  
1123 happen if KSM was not convicted, he responded, "Failure is  
1124 not an option," and even our president, in response to  
1125 questions about the trial, he already prejudged the case.  
1126 That statement by the president certainly can be used in a  
1127 venue hearing. "I don't think it will be offensive at all  
1128 when he is convicted and when the death penalty is applied to  
1129 him." In other words, let's hang them, but maybe try them  
1130 first.

1131 I even want to quote from our good friend, Mr. Weiner  
1132 from New York, and his comments on the "Morning Joe" show.  
1133 "If you want to have an international trial in the Hague, I  
1134 am going to find it a lot less satisfying than having this  
1135 guy face his accusers and have the accusers get a chance to  
1136 come in and say what this means, have a jury of New Yorkers  
1137 say, 'You are going to be put to death, pal.' That, to me,  
1138 is the way you mete out justice in this case."

1139 I certainly understand and agree with the comments of my  
1140 friend from New York, but all of these statements are



1141 admissible before a trial judge in New York to determine  
1142 whether KSM can get a fair trial, now with the rights given  
1143 to him under the Constitution.

1144       Any defense lawyer with any sense would immediately file  
1145 a change in motion for venue in this case because of all of  
1146 these statements and many others regarding pretrial  
1147 publicity. And with such a large percentage of New York  
1148 public already having made up their mind—and rightfully so—  
1149 how can anyone be assured that KSM and his lawyers will not  
1150 slow down the process with change of venue motions and  
1151 hearings all in the effort to delay the trial? And, of  
1152 course, some of those motions may be granted by the trial  
1153 judge, and the case won't even be tried in New York City. It  
1154 will be tried somewhere else in a district court in the  
1155 United States.

1156       Federal rules of criminal procedure number 21, under the  
1157 18 U.S. Code 3237(a) states that the court must transfer the  
1158 proceeding if the court is satisfied that so great a  
1159 prejudice against the defendant exists in the transferring  
1160 district that the defendant cannot obtain a fair and  
1161 impartial trial there.

1162       It would seem to me that a defense lawyer worth his salt  
1163 would object to the trial being tried in New York because of  
1164 the pretrial publicity against the defendant. And even New  
1165 York Governor David Paterson noted, "This is not a decision I

1166 would have made," that being transfer of the case to New  
1167 York. "It's very painful. We still have been unable to  
1168 rebuild that site, and having those terrorists tried so close  
1169 to the attack is going to be an encumbrance on all New  
1170 Yorkers."

1171       Mr. Chairman, the Southern District Courthouse is within  
1172 walking distance of Ground Zero. It seems hard to imagine  
1173 that a judge would not grant a motion from change-for change  
1174 of venue from this courthouse to somewhere else. As a former  
1175 prosecutor, this is a prosecutor's dream, to go over and  
1176 stand in the courtroom and point out the window to Ground  
1177 Zero, where the crime was committed, and 3,000 people were  
1178 murdered because of the defendant on trial. That would be a  
1179 great demonstrative evidence technique.

1180       But that is not going to happen, because a change of  
1181 venue would, in all likelihood, granting constitutional  
1182 rights to this terrorist would be granted because he gets all  
1183 the constitutional rights, including the right to a fair  
1184 trial and the right to a fair hearing in a venue on that  
1185 hearing.

1186       So as a judge for over 20 years, I can tell you from  
1187 personal experience, there are some personal procedural  
1188 issues of having this trial in New York. And even in the  
1189 progressive area of New York City, with the intent to give  
1190 the defendant a fair trial, this case would in all likelihood

1191 be transferred to some other place all because of the  
1192 decision of the attorney general to move the defendant from  
1193 Guantanamo and try him hopefully in a civil district court in  
1194 the United States.

1195       That is why we can start working to prevent this  
1196 mistake, by reporting the resolution out favorably so that  
1197 justice won't be delayed or denied in this case to the  
1198 American people.

1199       I yield back, Mr. Chairman. Thank you.

1200       Chairman Conyers. Thank you, Judge Poe.

1201       The chair recognizes the gentleman from Utah, Mr. Jason  
1202 Chaffetz.

1203       Mr. Chaffetz. Thank you, Mr. Chairman. I move to  
1204 strike the last word.

1205       Chairman Conyers. The gentleman is recognized.

1206       Mr. Chaffetz. Thank you, Mr. Chairman.

1207       I am very supportive of how—of this resolution 920,  
1208 because at its heart, it is about openness and transparency.  
1209 It is about the opportunity for us to see what is happening  
1210 on a very major decision, in changing the jurisdiction from a  
1211 military court to the federal courts.

1212       And so I find it almost ironic that often, in the  
1213 comments that I have heard so far, there are those that want  
1214 to operate in a vacuum. They don't want to see the  
1215 information. We even heard "does not add any light" from one

1216 of the comments earlier. I beg to differ.

1217       At the heart and soul of this is just a page-and-a-half  
1218 resolution, and I would like to read part of it to remind our  
1219 colleagues what it is we are talking about, because we are  
1220 asking the attorney general and the Office of the Solicitor  
1221 General to "provide"—to provide "any legal guidance or  
1222 recommendations made since January 20, 2009, regarding  
1223 additional legal rights of protection, including under the  
1224 Constitution statutes and treaties, detainees held at Naval  
1225 Station Guantanamo Bay, Cuba, received when transferred in  
1226 the United States from such Naval Station Guantanamo Bay,  
1227 Cuba, or, two, pretrial detention, post conviction  
1228 incarceration, or transportation within the United States, of  
1229 detainees held at Naval Station, Guantanamo Bay, Cuba, who  
1230 are to be transferred into the United States for prosecution  
1231 and trial in the United States District Court of the Southern  
1232 District of New York."

1233       That seems like a simple, easy openness and transparent  
1234 request. We have talked about the Constitution and justice,  
1235 and all of those are a good part of the discussion, but  
1236 really at the heart of this resolution is the role and  
1237 responsibility I think we have in this committee and in this  
1238 Congress to dive into these issues on such a major, major  
1239 situation such as the transfer of these—from the military  
1240 court's jurisdiction to the federal court.

1241           And, Mr. Chairman, I would remind you that, at one time,  
1242 Attorney General Eric Holder recognized the need to be able  
1243 to detain and interrogate terrorists outside the normal  
1244 process of criminal prosecution. In fact, he went so far as  
1245 to recognize that terrorists are not even entitled to  
1246 prisoner of war protections under the Geneva Conventions.

1247           In an interview on CNN in January of 2002, Mr. Holder  
1248 said, "It seems to me that given the way in which the  
1249 terrorists have conducted themselves, however, they are not,  
1250 in fact, people entitled to the protections of the Geneva  
1251 Conventions. They are not prisoners of war. If, for  
1252 instance, Mohamed Atta had survived the attack on the World  
1253 Trade Center, would we now be calling him a prisoner of war?  
1254 I think not. Should Zacarias Moussaoui be called a prisoner  
1255 of war? Again, I think not."

1256           These are important decisions that are moving forward,  
1257 and I believe that this committee does have a role and  
1258 responsibility in an open and transparent way to look at  
1259 these issues.

1260           And that is why, again, the change of jurisdiction here  
1261 into the federal courts is something that we as a committee  
1262 and we as a body ought to look at and especially here in the  
1263 United States Congress ought to have an ability to vote on,  
1264 and we should not—to be able to offer the information to the  
1265 American people, who also deserve to be able to see this

1266 information and the decision-making process.

1267         And that is what it is all about. I get the sense that  
1268 those that are opposed to 920 are afraid to have that type of  
1269 information out there in the public because it may be viewed  
1270 unfavorably. I, for one, want to see that it is out there  
1271 and that we are making the best decision for the United  
1272 States of America and for the people of the United States of  
1273 America.

1274         And therefore, I would urge my colleagues to vote in  
1275 favor of this resolution, 920.

1276         Thank you, Mr. Chairman.

1277         Chairman Conyers. You are welcome. And thank you, Mr.  
1278 Chaffetz.

1279         I am now pleased to turn to our chairman of a  
1280 subcommittee, a former magistrate himself, the gentleman from  
1281 Georgia, Hank Johnson, and recognize him at this time.

1282         Mr. Johnson. Thank you, Mr. Chairman Conyers.

1283         I can't fail to observe that what we have heard this  
1284 morning from my colleagues on the other side of the aisle is  
1285 just an extension of their party's "just say no" approach to  
1286 dealing with the important matters of today, just  
1287 partisanship.

1288         They know that the U.S. Supreme Court in Hamdan v.  
1289 Rumsfeld ruled that military commissions as conducted at  
1290 Guantanamo are illegal, so they don't want to close

1291 Guantanamo, and they do want to impose a method of trying  
1292 enemy combatants in a way that the Supreme Court has already  
1293 disapproved of, because in *Boumediene v. Bush*, the court  
1294 ruled that Gitmo detainees do, in fact, have constitutional  
1295 rights, because they are on territory where the U.S. has  
1296 effective jurisdiction.

1297         So what Attorney General Holder is doing is definitely  
1298 in keeping with the surprising rulings by our conservative  
1299 United States Supreme Court. And I think that the fact that  
1300 it was this U.S. Supreme Court that ruled in the way that it  
1301 did in *Hamdan* and in *Boumediene*, I think that that is extra-  
1302 that is extra impetus for everyone to see that we are talking  
1303 about serious constitutional rights here that the enemy  
1304 combatants, being held on-at Gitmo, have.

1305         The U.S. Supreme Court saw through this facade of  
1306 keeping these enemy combatants off of U.S. soil. And it was  
1307 always a scheme to try to hold them in America where we have  
1308 control and then try them according to the military-according  
1309 to the military combatant plan to-or process.

1310         That process, by the way, I am not sure that any change  
1311 has occurred in the military commissions process that would-  
1312 or a change in location of the enemy combatants. I am not  
1313 sure that there is any change in policy or procedure with  
1314 respect to the military commissions.

1315         And so we are simply following the law. The Republicans

1316 are following their process of saying no to everything. It  
1317 doesn't matter what it is, but anything that the  
1318 administration does, we will oppose, we will take that  
1319 opposite view.

1320         And I do admire their righteous indignation that each  
1321 and every one of them is able to project to the citizens of  
1322 America, I mean, just righteous indignation. And it is all—I  
1323 think the American public knows that it is all politics.

1324         And I certainly don't want these enemy combatants being  
1325 untried for years and years and years because there is no  
1326 change to the military commissions process. We have got to  
1327 get—we have got to get this thing done, got to get them done.  
1328 No problem with security in New York, a public trial. They  
1329 can espouse whatever views that they have, but I don't think  
1330 they will—

1331         Mr. Issa. Mr. Chairman, I would ask unanimous consent  
1332 that the gentleman have another minute to continue.

1333         Chairman Conyers. Without objection, objection. I  
1334 thank you.

1335         Mr. Johnson. Thank you. I don't think—yes, I just  
1336 don't see how it hurts America to deal with these enemy  
1337 combatants in a manner and in a place that is giving these  
1338 folks some rights that they would never give us if we were in  
1339 the contrary position.

1340         So I look forward to these trials or to this trial in



1341 New York district court, just blocks from where the attack  
1342 took place.

1343 And I yield back.

1344 Chairman Conyers. I thank you very much, Mr. Magistrate  
1345 Johnson.

1346 And I turn now to the distinguished and learned  
1347 gentleman from California, Mr. Darrell Issa, and recognize  
1348 him at this time.

1349 Mr. Issa. Thank you, Mr. Chairman. Move to strike the  
1350 last word.

1351 Chairman Conyers. The gentleman is recognized.

1352 Mr. Issa. Mr. Chairman, being a slightly more senior  
1353 member than when I came here a decade ago, I was pleased to  
1354 hear some of the—my more junior colleagues make very, very  
1355 good points, particularly Mr. Poe. I thought he hit most of  
1356 what I would have hit.

1357 So I would like to take just a few moments to go into  
1358 one or two other areas. First of all, Mr. Johnson, I am glad  
1359 I came after you, because I think the point that this  
1360 administration is choosing to use those tribunals, in fact,  
1361 speaks loudly about the whole point, that it is a choice to  
1362 try some in military tribunals and others in the court of  
1363 public opinion and others in New York court.

1364 This resolution—and I think we should stick to this  
1365 resolution, because I believe this resolution should be voted

1366 on a voice vote positively, because, in fact, it only does  
1367 what I know the chairman and ranking member both have been  
1368 dedicated to for their entire careers.

1369       It maintains this committee's oversight and  
1370 responsibility to appropriately look into major issues of the  
1371 day by the administration as to how the decision was made,  
1372 what constitutional grounds it was made on, what the advice  
1373 was. We have nothing in this resolution that would cause  
1374 either side to be concerned, unless, of course, we go back to  
1375 when I was a young person and piggy banks used to have the  
1376 three characters. One would say, "Hear no evil"; one would  
1377 say, "See no evil"; and one would say, "Speak no evil."

1378       The fact is, 9/11 was about a great evil perpetrated  
1379 against this country here in Washington, New York, but around  
1380 the world, and we, in fact, need to understand how we are  
1381 going to prevent it in the future, how the trials will occur,  
1382 what is appropriate for enemy combatants, and we are being  
1383 watched by everyone around the world as to process.

1384       So, Mr. Chairman, I am going to go back to the core  
1385 words of the resolution and not try to second-guess the  
1386 outcome of a trial in New York and not to second-guess, to be  
1387 honest, an outcome of a tribunal-type trial in Guantanamo or  
1388 anywhere else in the world.

1389       We need to know the deliberation process, the  
1390 constitutional grounds, as is appropriate for our oversight.

1391 And I commend Mr. Smith and the others who brought this  
1392 resolution to us so that we would not be sitting here with  
1393 hear no evil, see no evil, speak no evil.

1394       The truth is, we have a constitutional obligation to  
1395 oversee the executive branch, to oversee the courts, and to  
1396 be a positive influence. So, again, for all of those who may  
1397 be wavering, this is about our constitutional role. It is  
1398 about us knowing what we don't know. And I certainly, for  
1399 one, intend, no matter who the president is, no matter what  
1400 my party may or may not think, I am from the party and the  
1401 part of the country where, in California, we want to know  
1402 what we don't know, we want to be as well informed as we can  
1403 be, and my constituents insist that I know as much as I can  
1404 about what is going on.

1405       And certainly, in my other role over on government  
1406 oversight and reform, I would be shocked if we ever said we  
1407 don't want to know how the administration made a decision,  
1408 whether it was highly controversial or simply a few billion  
1409 dollars that may or may not have been well spent.

1410       So I would hope that this committee holds itself to the  
1411 same high standard. I thank the chairman for yielding and  
1412 would assume that a voice vote that sounds like yes would be  
1413 good enough. I believe it should be, and yield back.

1414       Chairman Conyers. Could I inquire of the gentleman that  
1415 he encourages a yes vote regardless of which side prevails, a

1416 voice vote?

1417 Mr. Issa. I, one, will not be asking for a recorded  
1418 vote, Mr. Chairman.

1419 Chairman Conyers. Well—

1420 Mr. Issa. I am going to—I am going to take—I am going  
1421 to take the—

1422 Chairman Conyers. I wanted you to assume a much larger  
1423 role than speaking for yourself.

1424 Mr. Issa. You know, Mr. Chairman, when I go next door,  
1425 Mr. Towns and I, we tend to agree on what we thought we  
1426 heard. But here, I would not presume on those at the center  
1427 of the dais.

1428 Thank you, Mr. Chairman.

1429 Chairman Conyers. Thank you so much.

1430 The chair is pleased now to recognize the ranking member  
1431 on the Immigration Committee, the distinguished gentleman  
1432 from Iowa, Mr. Steve King.

1433 Mr. King. Thank you, Mr. Chairman. Appreciate being  
1434 recognized and have an opportunity to address this subject  
1435 matter.

1436 I thank you, as well as Ranking Member Smith, for  
1437 bringing this resolution of inquiry on this very important  
1438 issue.

1439 The Obama administration is acting dangerously by  
1440 bringing foreign terrorists to our shores from Guantanamo

1441 Bay. We did visit Guantanamo Bay just before Easter, and I  
1442 think that the situation down there is perfectly tailored to  
1443 try these terrorists.

1444 But this is bringing them to our shores, a direct threat  
1445 to our national security. By doing this, the Obama  
1446 administration at the direction of the attorney general  
1447 apparently, but has to be with the approval of the Obama  
1448 administration, is opening us up for another terrorist  
1449 attack.

1450 And while you have heard a host of other concerns from  
1451 my colleagues, Mr. Chairman, as the ranking member of the  
1452 Immigration Subcommittee, I would like to focus on the  
1453 immigration concerns.

1454 The truth is, if we bring these terrorists to U.S. soil,  
1455 we may not be able to keep them in detention. Even worse, we  
1456 may never be able to deport them, so if we manage to convict  
1457 these terrorists, which is a question, they may not—they may  
1458 one day become our constituents' new neighbors. How is this  
1459 possible, Mr. Chairman?

1460 Well, it is because of the confluence of two factors.  
1461 One is the Convention against Torture, and the other one is  
1462 the Supreme Court's 2001 decision, *Zadvydas v. Davis*, which  
1463 we have discussed in this committee. The Convention against  
1464 Torture prohibits the return of aliens to countries where  
1465 they may be tortured. The U.S. Department of Justice's

1466 regulations implementing the convention made no exceptions  
1467 whatsoever—

1468 Ms. Wasserman Schultz. Will the gentleman yield for a  
1469 moment?

1470 Mr. King. I will yield to the gentlelady, and I hope it  
1471 doesn't work against my time.

1472 Ms. Wasserman Schultz. Thank you so much. I am just  
1473 wondering, since the gentleman is suggesting that we would  
1474 somehow not be able to detain a terrorist that was confined  
1475 in this country, if you could cite for me any example—cite  
1476 for the committee any example of a terrorist that is confined  
1477 on our soil after prosecution that has escaped from  
1478 detention.

1479 Mr. King. Reclaiming my time, I would challenge the  
1480 gentlelady to cite an attorney general that has made such an  
1481 irrational decision and challenge the gentlelady to point out  
1482 a case whereby, if there is not another warrant or another  
1483 hold on a defendant, if they are found not guilty or if they  
1484 are released on a constitutional grounds or technical  
1485 grounds, that they aren't taken to the front doors of the  
1486 federal courtroom and released into the streets of wherever  
1487 they are being tried.

1488 And I would yield to the gentlelady if she has a  
1489 response to that.

1490 Ms. Wasserman Schultz. The response that I have is that

1491 the gentleman could not cite an example of the indication  
1492 that he made—

1493 Mr. King. Reclaiming my time, I would point out—  
1494 reclaiming my time, I would point out that—that example is  
1495 predicated upon finding an irrational decision by a previous  
1496 attorney general, and that is why I asked the question back  
1497 that way, so I could respond to the inquiry of the  
1498 gentlelady.

1499 But proceeding with my statement, the U.S. Department of  
1500 Justice's regulations implementing the convention made no  
1501 exceptions whatsoever, no exceptions for rapists, murderers,  
1502 participants in genocide and terrorists. They are equally  
1503 protected, Mr. Chairman.

1504 Hundreds of criminals have already received relief from  
1505 deportation as a result of the convention, and so has an  
1506 alien involved in the assessment of Anwar Sadat. So there  
1507 would be an example.

1508 Osama bin Laden himself could probably find a way to at  
1509 least make the effort at deportation and frustrate  
1510 deportation by making a torture claim under the convention.

1511 And after all, one of the standards are, the most  
1512 heinous a person's actions, consequently the more hated they  
1513 are in their home countries, and the more likely they are to  
1514 be subjected to torture, if they are returned to their home  
1515 country.

1516           And now the ability of terrorists to frustrate the  
1517 deportation process might be tolerable if we were certain  
1518 that we could keep these terrorists detained. I am not  
1519 worried about whether we can keep them locked in maximum  
1520 security. I am worried about activist federal judges.

1521           So section 412 of the Patriot Act does wisely provide  
1522 for indefinite detention of terrorist aliens regardless of  
1523 whether they qualify under the Convention against Torture or  
1524 if they have other available relief from removal.

1525           However, it is very possible that the Supreme Court, the  
1526 intervening Supreme Court, will rule this provision  
1527 unconstitutional. They have engaged in this process a number  
1528 of times in the past. Boumediene would be one; Hamdan would  
1529 be another. In Zadvydas, the Supreme Court ruled that, under  
1530 a different law, aliens who had been admitted to the U.S. and  
1531 then ordered removed could not be detained for more than 6  
1532 months, if for some reason, such as the Convention against  
1533 Torture, they could not be removed.

1534           And in Zadvydas, the Supreme Court made a statutory  
1535 interpretation. However, the court stated that it was  
1536 "interpreting the statute to avoid a serious constitutional  
1537 threat." So they gave us a warning. The court believed that  
1538 "a statute permitting indefinite detention of an alien would  
1539 raise a serious constitutional problem."

1540           So already, Zadvydas, the decision has resulted in the



1541 release of hundreds of alien criminals into our communities.  
1542 Jonathan Cohn, the former deputy assistant attorney general,  
1543 has testified that the government is now required to release  
1544 numerous rapists, child molesters, murderers, and other  
1545 dangerous illegal aliens into our streets, "vicious criminal  
1546 aliens are now being set free within the U.S."

1547       It seems incredible that the administration would  
1548 intentionally bring alien terrorists into the United States  
1549 knowing that we may never be able to deport them or even  
1550 detain them on a long-term basis. This resolution will help  
1551 shed some light on the extent to which, if at all, the  
1552 administration has contemplated these troubling issues.

1553       And, Mr. Chairman, I would point out that we have had  
1554 intervention on the part of the Supreme Court in the past.  
1555 We passed the Detainee Treatment Act, and we passed then the  
1556 Military Commissions Act. And in those cases, we were  
1557 seeking to adapt to a decision of the Supreme Court. We  
1558 stripped—under Article 3, Section 2—the Supreme Court's  
1559 authority to hear these cases. And regardless, the Supreme  
1560 Court reached over the D.C. Circuit and pulled the case out  
1561 anyway and granted constitutional rights to people that had  
1562 no previous basis to them.

1563       This is a very slippery slope that we are on. The  
1564 terrorists that are in Guantanamo Bay have not set foot, for  
1565 the most part, in the United States. And if and when they

1566 should set foot in the United States, then we open ourselves  
1567 up to the exposure of them being released at the doors of a  
1568 federal courthouse potentially within six blocks of Ground  
1569 Zero and New York City.

1570 I will submit this: There is a no constitutional reason  
1571 to bring these enemy combatants into the United States.

1572 There is no rational reason to do so. There isn't even a  
1573 valid political reason to do so, and there is no statutory or  
1574 legal reason to do so.

1575 I believe this is an irrational decision, and I think it  
1576 will come back to bite us in the United States. And I  
1577 support the gentleman from Texas, and I yield back the  
1578 balance of my time.

1579 Chairman Conyers. Thank you, Steve King.

1580 I am pleased now to recognize the distinguished  
1581 gentleman from Florida, Mr. Tom Rooney.

1582 Mr. Rooney. Thank you, Mr. Chairman.

1583 Much of what I wanted to say has obviously already been  
1584 said, but I think that, with regard to the resolution and  
1585 bringing to light the inadequacies apparent—our alleged  
1586 inadequacies with military commissions specifically, as a  
1587 former judge advocate and somebody who taught constitutional  
1588 and criminal law and the laws of war at West Point, I am a  
1589 little dismayed by the fact that the military commissions and  
1590 military tribunals are being discarded.

1591           And I think that this resolution is a good—is being  
1592 brought at a good time for me to ask why, to ask the  
1593 questions why—what has the military commission and military  
1594 tribunals process done to merit disregard? What has it done  
1595 to not—the reputation it has gotten over the years, as was  
1596 said before, from the revolution to the Civil War to World  
1597 War II, and presidents of both parties, why at this point are  
1598 we disregarding it?

1599           I think asking those questions at this point, it is not  
1600 a matter of partisanship or being the party of no. It is an  
1601 honest question and one that I want to delve into here a  
1602 little bit.

1603           The answer cannot be, by the way, which I have heard  
1604 from time to time, that the World Trade Center was not a  
1605 defense target. It was an act of war, what happened on 9/11,  
1606 and one that this body endorsed wholly.

1607           The questions also, which have been raised before, as  
1608 Judge Poe brought up venue, I would also bring up other  
1609 processes and procedures, such as evidence, chain of custody,  
1610 testimony, admissible evidence with or without Miranda. If  
1611 you agree that evidence was gained from what was classified  
1612 as torture, what would a judge do in a situation when an  
1613 objection is made at that point? How can a judge in federal  
1614 court that is used to a procedure that disallows certain  
1615 evidence ignore it for this process?

1616 Those things are going to be very difficult questions  
1617 that we need answers to. Jurisdiction, by the way, the  
1618 difference between Timothy McVeigh and Khalid Sheikh Mohammed  
1619 is one at its very core a question of jurisdiction. How do  
1620 you answer that question in criminal procedure?

1621 Why have we lost faith in the military commission? What  
1622 have the military commissions done to lose the trust that  
1623 this country has given them over the entire course of our  
1624 history?

1625 Mr. Watt talked about the appearance and the actuality  
1626 of fairness in military commissions. I want to know why that  
1627 appearance and actuality of fairness is gone. Why is the  
1628 precedent no longer adequate?

1629 And speaking on the note of appearance, when Attorney  
1630 General Eric Holder testified here before us a few months  
1631 ago, I asked him the question about Guantanamo and why we  
1632 couldn't, after having just visited there with other members  
1633 from this body, the perception of what Guantanamo Bay is and  
1634 the reality of what it is are two very different things.

1635 Anybody that has traveled to Gitmo has seen a facility  
1636 that is run by our men and women in uniform, something that  
1637 is akin to any state penitentiary, and one that we can feel  
1638 safe and secure and confident that everything is being done  
1639 the right way.

1640 And the attorney general replied to me that the

1641 perception is so overwhelming that Guantanamo has to be  
1642 closed because of the reputation that it has caused us to  
1643 have with our friends in Europe and abroad, which I disagree  
1644 with, but taking that for what it is—for what it is worth,  
1645 what is Mr. Holder, after he has said and made insinuations,  
1646 as has the administration, as has many other people on this  
1647 body, what would be said by our friends across the oceans if  
1648 the procedural problems that I raised and the evidence and  
1649 the chain of custody and those type of things, what if those  
1650 things were found to cause an acquittal of one of these  
1651 defendants?

1652         We have been assured that these cases are going to be a  
1653 slam dunk. What if they are not? Well, we are told that  
1654 they will be re-detained anyway. What kind of perception  
1655 does that send to the world, that in our federal judicial  
1656 system, we tried people—or some could be acquitted or are  
1657 acquitted, and then we re-detain them anyway? What kind of  
1658 message does that send to the world?

1659         That sends a message to the world that we have a court  
1660 system that we don't have confidence in. And if we don't  
1661 have confidence in it, it doesn't matter, because we are  
1662 going to just send them to jail anyway, whether it be in  
1663 America or Guantanamo or wherever, when we have military  
1664 commissions that can get convictions, that can give due  
1665 process, which I, by the way, believe that the detainees

1666 should have due process. I just don't understand why the  
1667 military commissions are no longer adequate to do that.

1668 And so, Mr. Speaker—or, Mr. Chairman, I would yield back  
1669 just by saying that this resolution, I think, is needed from  
1670 the standpoint of just answering questions. I don't know why  
1671 the Judiciary Committee is afraid of asking questions and  
1672 getting those answers back from the attorney general. And I  
1673 hope people vote for it.

1674 Thank you. I yield back.

1675 Chairman Conyers. Thank you very much, Tom Rooney.

1676 Might I inquire of you this? Would it be acceptable to  
1677 you that, with some of my staff, I put together the responses  
1678 to the many questions that you have raised, some of which we  
1679 found very interesting and quite important, and submit to  
1680 you, after the holidays, a memo that attempts to address  
1681 these questions?

1682 Mr. Rooney. Mr. Chairman, I would appreciate that very  
1683 much. In fact, I traveled to Guantanamo Bay with some of  
1684 your staff. But I think that Mr. Holder needs to answer some  
1685 of the questions, too, with regard specifically to the  
1686 perception. But I do appreciate that very much.

1687 Chairman Conyers. Well, then, with your agreement to  
1688 receive this memorandum, we will begin working on it. And I  
1689 thank you for your very perceptive statement.

1690 The chair recognizes the gentleman from Mississippi,

1691 Gregg Harper.

1692 Mr. Harper. Thank you, Mr. Chairman.

1693 Chairman Conyers. Possibly the last speaker on this  
1694 side, and I can't imagine that there would be anyone on the  
1695 other side that would want to add anything.

1696 The gentleman is recognized.

1697 Mr. Harper. I move to strike the last word.

1698 Chairman Conyers. The gentleman is recognized.

1699 Mr. Harper. Mr. Chairman, the pending New York City  
1700 trial of Khalid Sheikh Mohammed and four other 9/11 plotters  
1701 raises a myriad of issues, including where these terrorists  
1702 will be housed before, during and after the trial. According  
1703 to a 2007 letter from the Federal Bureau of Prisons to  
1704 members of Congress, the Bureau of Prisons would consider the  
1705 individuals confined in Guantanamo Bay to be high security.  
1706 Therefore, they would require the highest level escort staff-  
1707 type of restraints and other security measures, if they were  
1708 to be transferred into Bureau of Prisons' custody.

1709 The BOP operates 15 high-security penitentiaries in 10  
1710 states. New York is not 1 of those 10. New York is home to  
1711 two medium-security facilities, a community corrections  
1712 program, and two administrative-level metropolitan  
1713 correctional center facilities that function as jails, not as  
1714 prisons, by housing federal pretrial defendants and material  
1715 witnesses.

1716           These MCC facilities are not high-security facilities.  
1717 The closest federal high-security penitentiary is located in  
1718 Pennsylvania, over 120 miles from New York City. The  
1719 administration may then call up state and city facilities  
1720 near the U.S. district courthouse to house the detainees.  
1721 Sing Sing is the closest state maximum-security prison to New  
1722 York City and the U.S. district courthouse, and houses just  
1723 over 1,700 inmates. New York City's Rikers Island is not a  
1724 prison. It is a city jail operated by the New York City  
1725 Department of Corrections.

1726           The facility which consists of 10 jails holds local  
1727 offenders who are not awaiting trial and cannot afford or  
1728 cannot obtain bail or were not given bail from a judge, those  
1729 serving sentences of 1 year or less, and those temporarily  
1730 place their pending transfer to another facility. Rikers  
1731 Island is not a maximum-security facility.

1732           Has the Justice Department fully assessed the extremely  
1733 high security needed for pretrial detainees of Mohammed and  
1734 the others? Will it utilize the federal facility? How will  
1735 such detention affect other detainees or inmates? And what  
1736 if they are convicted? Does the Justice Department have a  
1737 plan for where it will incarcerate these terrorists?

1738           The federal high security penitentiary in Terre Haute,  
1739 Indiana, currently houses federal death row inmates. If  
1740 Mohammed and the others receive the death penalty, does the



1741 Justice Department plan to house them in Indiana?

1742 Or perhaps the department intends to incarcerate them in  
1743 the new proposed detainee facility most likely located in  
1744 Illinois. Either way, the costs associated with housing the  
1745 detainees in either a federal, state or city facility with  
1746 sufficient security protections for all of the pretrial  
1747 motions, trial, sentence, and appeals is unknown. But given  
1748 the potential link of all these proceedings, it is fair to  
1749 say that it will be very costly to the taxpayers.

1750 I urge my colleagues to support the resolution so that  
1751 the Congress and the American people will know the full  
1752 intentions of the Justice Department.

1753 Thank you, Mr. Chairman. I yield back my time.

1754 Chairman Conyers. Thank you, Gregg Harper.

1755 The chair is going to allow the distinguished gentleman  
1756 from Massachusetts, Bill Delahunt, himself a state-former  
1757 state prosecutor—has—he has an observation that he would like  
1758 to make, and I would like to yield to him for that purpose.

1759 Mr. Delahunt. Well, thank you, Mr. Chairman. And I  
1760 will be very brief, and I will move to strike the last word,  
1761 but I won't even take anywhere near the 5 minutes.

1762 I am going to vote against this resolution because I  
1763 think it does go to credibility of the committee. As my  
1764 memory is, earlier this year, Congress and the executive  
1765 branch did negotiate a detailed set of reporting requirements

1766 governing the very questions of what information should be  
1767 transmitted to Congress. And I—we got into detention of the  
1768 Guantanamo detainees.

1769       But having said that, I want to express my delight in  
1770 the fact that our friends and colleagues on the other side  
1771 have clearly established that this is not a partisan issue  
1772 and there is no political motivation, in terms of bringing  
1773 this before the committee, and I commend them for that,  
1774 because I intend to file a resolution of inquiry not based on  
1775 hypotheticals—and we have heard that term, "what if," "what  
1776 if this," "what if that," about the Guantanamo detainee  
1777 issues and the prosecution that will take place in New York,  
1778 but something that actually happened. It happened during the  
1779 Bush administration, and this is not meant, again, to be  
1780 political.

1781       But it involved a case, a real case where a Canadian  
1782 Syrian by the name of Maher Arar was detained in New York,  
1783 and despite his objections and his insistence that he be sent  
1784 to Canada, was transferred to Syria, which has a record,  
1785 according to the Department of State, in terms of torture, is  
1786 a considerable list of practices involving 38 forms of  
1787 torture, where he was held for a year.

1788       And myself and my ranking member on Foreign Affairs  
1789 Committee attempted to request information under the former  
1790 Justice Department and other agencies of the government to

1791 get the information as to how and why that occurred.

1792       The issue of diplomatic assurances came to play. In  
1793 other words, Syria provided diplomatic assurances to the  
1794 administration that they would not torture this particular  
1795 individual when, again, given the Department of State report,  
1796 it was going to happen. And it did happen. And yet we don't  
1797 know why or how that decision was made.

1798       So I look forward to working with my colleagues on that  
1799 particular issue and so that we don't repeat that particular  
1800 mistake. But I want to let—

1801       Mr. Issa. Would the gentleman yield?

1802       Mr. Delahunt. No, because I know that we have got a  
1803 tight time schedule here, but I am sure that I will be happy  
1804 to discuss it with Mr. Issa, and I know that you will be  
1805 supportive as we move forward.

1806       And with that, I yield back.

1807       Mr. Issa. The gentleman is correct. I will be  
1808 supportive.

1809       Mr. Delahunt. I am grateful.

1810       And I will yield back.

1811       Ms. Jackson Lee. Mr. Chairman? Mr. Chairman?

1812       Chairman Conyers. Thank you, Mr. Delahunt.

1813       Ms. Jackson Lee. Mr. Chairman, I have a unanimous  
1814 consent.

1815       Chairman Conyers. A reporting quorum being present, the

1816 question is on reporting the resolution adversely to the  
1817 House. Those in favor of reporting adversely, say "aye."

1818 [A chorus of ayes.]

1819 Chairman Conyers. Those opposed, "no."

1820 [A chorus of noes.]

1821 Chairman Conyers. The record vote has been asked for,  
1822 and the clerk will call the roll.

1823 The Clerk. Mr. Conyers?

1824 Chairman Conyers. Aye.

1825 The Clerk. Mr. Conyers votes aye.

1826 Mr. Berman?

1827 [No response.]

1828 Mr. Boucher?

1829 [No response.]

1830 Mr. Nadler?

1831 [No response.]

1832 Mr. Scott?

1833 Mr. Nadler. Aye.

1834 The Clerk. Mr. Nadler votes aye.

1835 Mr. Scott?

1836 Mr. Scott. Aye.

1837 The Clerk. Mr. Scott votes aye.

1838 Mr. Watt?

1839 Mr. Watt. Aye.

1840 The Clerk. Mr. Watt votes aye.

1841 Ms. Lofgren?  
1842 Ms. Lofgren. Aye.  
1843 The Clerk. Ms. Lofgren votes aye.  
1844 Ms. Jackson Lee?  
1845 Ms. Jackson Lee. Aye.  
1846 The Clerk. Ms. Jackson Lee votes aye.  
1847 Ms. Waters?  
1848 Ms. Waters. Aye.  
1849 The Clerk. Ms. Waters votes aye.  
1850 Mr. Delahunt?  
1851 Mr. Delahunt. Aye.  
1852 The Clerk. Mr. Delahunt votes aye.  
1853 Mr. Wexler?  
1854 [No response.]  
1855 Mr. Cohen?  
1856 Mr. Cohen. Aye.  
1857 The Clerk. Mr. Cohen votes aye.  
1858 Mr. Johnson?  
1859 Mr. Johnson. Aye.  
1860 The Clerk. Mr. Johnson votes aye.  
1861 Mr. Pierluisi?  
1862 Mr. Pierluisi. Aye.  
1863 The Clerk. Mr. Pierluisi votes aye.  
1864 Mr. Quigley?  
1865 [No response.]

1866 Ms. Chu?  
1867 Ms. Chu. Aye.  
1868 The Clerk. Ms. Chu votes aye.  
1869 Mr. Gutierrez?  
1870 [No response.]  
1871 Ms. Baldwin?  
1872 [No response.]  
1873 Mr. Gonzalez?  
1874 Mr. Gonzalez. Aye.  
1875 The Clerk. Mr. Gonzalez votes aye.  
1876 Mr. Weiner?  
1877 [No response.]  
1878 Mr. Schiff?  
1879 Mr. Schiff. Aye.  
1880 The Clerk. Mr. Schiff votes aye.  
1881 Ms. Sanchez?  
1882 [No response.]  
1883 Ms. Wasserman Schultz?  
1884 Ms. Wasserman Schultz. Aye.  
1885 The Clerk. Ms. Wasserman Schultz votes aye.  
1886 Mr. Maffei?  
1887 Mr. Maffei. Aye.  
1888 The Clerk. Mr. Maffei votes aye.  
1889 Mr. Smith?  
1890 Mr. Smith. No.

1891 The Clerk. Mr. Smith votes no.  
1892 Mr. Goodlatte?  
1893 [No response.]  
1894 Mr. Sensenbrenner?  
1895 [No response.]  
1896 Mr. Coble?  
1897 Mr. Coble. No.  
1898 The Clerk. Mr. Coble votes no.  
1899 Mr. Gallegly?  
1900 [No response.]  
1901 Mr. Lungren?  
1902 Mr. Lungren. No.  
1903 The Clerk. Mr. Lungren votes no.  
1904 Mr. Issa?  
1905 Mr. Issa. No.  
1906 The Clerk. Mr. Issa votes no.  
1907 Mr. Forbes?  
1908 [No response.]  
1909 Mr. King?  
1910 Mr. King. No.  
1911 The Clerk. Mr. King votes no.  
1912 Mr. Franks?  
1913 [No response.]  
1914 Mr. Gohmert?  
1915 Mr. Gohmert. No.

1916 The Clerk. Mr. Gohmert votes no.  
1917 Mr. Jordan?  
1918 Mr. Jordan. No.  
1919 The Clerk. Mr. Jordan votes no.  
1920 Mr. Poe?  
1921 Mr. Poe. No.  
1922 The Clerk. Mr. Poe votes no.  
1923 Mr. Chaffetz?  
1924 Mr. Chaffetz. No.  
1925 The Clerk. Mr. Chaffetz votes no.  
1926 Mr. Rooney?  
1927 Mr. Rooney. No.  
1928 The Clerk. Mr. Rooney votes no.  
1929 Mr. Harper?  
1930 Mr. Harper. No.  
1931 The Clerk. Mr. Harper votes no.  
1932 Mr. Forbes?  
1933 Mr. Forbes. No.  
1934 The Clerk. Mr. Forbes votes no.  
1935 Mr. Gutierrez?  
1936 Mr. Gutierrez. Aye.  
1937 The Clerk. Mr. Gutierrez votes aye.  
1938 Mr. Quigley?  
1939 Mr. Quigley. Aye.  
1940 The Clerk. Mr. Quigley votes aye.



1941 Mr. Wexler?

1942 Mr. Wexler. Aye.

1943 The Clerk. Mr. Wexler votes aye.

1944 Mr. Berman?

1945 Mr. Berman. Aye.

1946 The Clerk. Mr. Berman votes aye.

1947 Mr. Franks?

1948 Mr. Franks. No.

1949 The Clerk. Mr. Franks votes no.

1950 Chairman Conyers. Clerk will report.

1951 The Clerk. Mr. Chairman, 20 members voted aye, 13

1952 members voted nay.

1953 Chairman Conyers. The resolution is adversely reported

1954 to the House. Members will have 2 days to submit views.

1955 I want to thank the members for their temperate, but yet

1956 passionate comments made today. The committee will stand

1957 adjourned, and we will hope to see all of our friends with us

1958 at our Christmas party starting at 4 o'clock.

1959 Committee is adjourned.

1960 [Whereupon, at 11:53 a.m., the committee was adjourned.]