

A famous civil rights leader years ago said, "Don't tell me what you believe. Tell me what you do, and I will tell you what you believe."

CRISIS ON WALL STREET

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. GEORGE MILLER) is recognized for 5 minutes.

Mr. GEORGE MILLER of California. Mr. Speaker, today President Bush went to Wall Street, and he went to Wall Street because he believes that Wall Street is now in trouble. It is in trouble with investors, it is in trouble with the American people, it is in trouble with the international capital communities; and therefore, the President went to Wall Street.

The President today recognized that we have a crisis and a scandal in the financial markets in the United States; that, rightfully, professional investors, amateur investors, and people who really do not even know how to invest but have a stake in Wall Street through their pension plans have lost their confidence and are starting to think that somebody ought to go to jail.

This did not happen today, it did not happen yesterday, it did not happen last week when the President made up his mind he was going to Wall Street. This has been a crisis for the average American for more than a year. This has been a crisis since Enron and Tyco and many other companies started to falter as their fraudulent bookkeeping schemes started to come to light.

Hundreds of thousands of Americans have had their pensions evaporate as companies disguised their financial health and then immediately declared bankruptcy. Hundreds of thousands of Americans who thought they might be able to retire in the next couple of years now recognize that they are going to have to work the rest of their lives if they are going to get by. This was a crisis for tens of thousands of employees whose jobs evaporated overnight because of the greed of the corporate executives who, while they told employees they could not provide additional health care dollars, they could not provide extra compensation, they could not give to their pensions, were taking hundreds of millions of dollars off the top of the corporation.

This has been a disaster for millions of shareholders across this country and in the rest of the world as they lost value in their portfolios, some of it for their retirement, some of it for their children, some of it for their families, because of the deception, the greed, the dishonesty that was rampant on Wall Street these last couple of years. Yet it took almost 18 months for George Bush to ask what was going on. It took almost 18 months for George Bush to deliver a major speech on this crisis.

The President did not deliver the speech when it was just the American family that was in trouble. He did not

deliver the speech when it was just the workers at Enron or ImClone or Dynergy that were in trouble. When we in California tried to tell him that they were manipulating the energy market, that they were gouging our consumers, that they were gouging the State, that it was all manipulation, they told us there was nothing to talk about, that they were comfortable that the market would work it all out. There was no market. It was manipulation. It was greed. It was dishonesty. It was fraud.

The same was true when he appointed Harvey Pitt as the chairman of the Securities and Exchange Commission, who said that the previous chairman of the Securities and Exchange Commission, Mr. Levitt, had been too hard on American corporations; when he tried to get honesty and transparency in their accounting processes, the industry came to Congress and got them to stall out. So Mr. Pitt said he is coming to be kinder and gentler to these corporations.

That is not what we need. We need a watchdog. We do not need a lapdog. But Mr. Pitt was appointed to be a lapdog. I do not think Mr. Bush can retrain him fast enough to take care of the American investor, the American worker, and the American shareholder. Every week now we get a new revelation. And the interesting thing is that many of the things these corporations were doing may not be against the law.

Merck was taking money that went to the pharmacists and saying it was their revenue. They never saw the money; it never came to them. And they are saying this is generally accepted within accounting principles. Generally accepted to what? To misstate revenues, to misstate earnings? I do not think so. But apparently it is.

That is why we need what Senator SARBANES is presenting to the Senate right now, a strong, independent review board, and not some industry control board that the President has been for, or that Mr. Pitt has been for, controlled by industry, making up the rules for industry for the good of the industry and not for the American people.

An investor today in the American stock market, whom are they to believe? Are they to read the 10K statements? They apparently have been misleading. Are they to read the page that is signed off by the accountant? They have been lying to the public. Are they going to go talk to the attorneys? They have been misleading the public and the boards of directors and others.

Mr. President, we are glad that you finally recognized this is a crisis, but for millions of Americans who have lost their pensions, lost their jobs, and lost their savings, this was a crisis a long time ago.

INTRODUCTION OF MILITARY TRIBUNALS ACT OF 2002

The SPEAKER pro tempore. Under a previous order of the House, the gen-

tleman from California (Mr. SCHIFF) is recognized for 5 minutes.

Mr. SCHIFF. Mr. Speaker, today I will be introducing the Military Tribunals Act of 2002 to provide congressional authorization for tribunals to try unlawful combatants against the United States in the war on terrorism.

Article I, section 8 of the Constitution provides that it is the Congress that has the power to constitute tribunals inferior to the Supreme Court to define and punish offenses against the law of nations.

Up until now, there has been no congressional authorization for military tribunals. The formation of these tribunals, thus far, has been performed solely by executive order of the President with clarifying regulations promulgated by the Secretary of Defense.

Some would argue, not implausibly, that despite the clear language of article I, section 8, congressional authorization is not necessary; that as President and commander in chief, he has the authority, all the authority he needs, to regulate the affairs of the military, and this power extends to the adjudication of unlawful combatants. Ultimately, if the Congress fails to act, any adjudications of the military tribunals will be challenged in court on the basis that the tribunals, having been improperly constituted, the sentences cannot stand.

Through this bill, we can remove any legal cloud that would overhang these prosecutions. For one thing the Supreme Court has made abundantly clear is that the power of the executive when it acts in concert with the Congress is at its greatest ebb. But there is another reason, an even more compelling reason, for Congress to act, and that is the separation of powers.

No single branch should have the authority on its own to establish jurisdiction for a tribunal, to determine the charges, to determine indeed what defendants should be brought before that tribunal, to determine process, and to serve as judge, jury and potential executioner. As a former prosecutor, I would not have wanted such unbridled authority, nor do I believe it is appropriate here.

The Military Tribunals Act of 2002 establishes the jurisdiction of these new courts over noncitizens, non-U.S. residents, unlawful combatants, al-Qaeda members, and those working in concert with them to attack the United States. It preserves the right of habeas corpus, and appeal, and the basic rights of due process. It also protects the confidentiality of sources of information and classified information. And it also protects ordinary citizens from being exposed to the dangers of trying these suspects.

Perhaps most important, in the context of a war without clear end, against an enemy without uniform or nation, the bill requires the President to report to Congress on who is detained for how long and on what basis.

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Mr. Speaker, in sum, the Military Tribunal Act of 2002 gives the Commander in Chief the power to try unlawful combatants, provides the confidence these judgments will be upheld, establishes clear rules of due process, maintains our check and balances, and permits Congress to effectively oversee the war powers as the Constitution and the preservation of liberty requires.

Separation of powers: Our great nation was founded on the basic principles of liberty and justice for all. And one of the founding principles of our government is a separation of powers, and a system of checks and balances.

We set up our government this way for a reason. The delegates to the Constitutional Convention faced a difficult challenge—to create a strong, cohesive central government, while also ensuring that no individual or small group in the government would become too powerful. They formed a government with three separate branches, each with its own distinct powers.

Without this separation of powers, any one branch of government could have the power to establish a tribunal, decide what charges would be covered and what due process would be afforded, and also serve as judge and jury. The intent of the framers was to avoid these kinds of imbalances of power—to provide checks and balances.

That is why Congress must have a role in setting up military tribunals.

The role of military tribunals: As the United States and its allies continue to engage in armed conflict with al Qaeda and the Taliban, military tribunals provide an appropriate forum to adjudicate the international law of armed conflict. While it may sound incongruous to have a justice system to deal with crimes of war, this process ensures adherence to certain international standards of wartime conduct. In order to garner the support of the community of nations, military trials must provide basic procedural guarantees of fairness, consistent with the international law of armed conflict and the International Covenant on Civil and Political Rights.

Constitutional justification: Congressional authorization is necessary for the establishment of extraordinary tribunals to adjudicate and punish offenses arising from the September 11, 2001 attacks, or future al Qaeda terrorist attacks against the United States, and to provide a clear and unambiguous legal foundation for such trials.

This power is granted by the U.S. Constitution, which gives congress the authority to constitute tribunals, define and punish offenses against the Law of Nations, and make rules concerning captures.

While Congress has authorized the President to use all necessary and appropriate force against those nations, organizations, or persons that he determines to have planned, authorized, committed, or aided the terrorist attacks or harbored such organizations or persons, Congress has yet to expressly authorize the use of military tribunals.

Crafting the bill: In November, 2001, the President issued a military order which said non-U.S. citizens arrested at home or abroad could be tried by military tribunals. In March, 2002, the Department of Defense announced rules for military trials for accused terrorists.

Believing that Congress should play a critical role in authorizing military tribunals, I began discussing this issue with legal organizations, military law experts, and legal scholars. The result of these discussions is the Military Tribunals Act of 2002, which I am introducing today.

Who is covered: My bill will give the President the authority to carry out military tribunals to try individuals who are members of al Qaeda or members of other terrorist organizations knowingly cooperating with or aiding or abetting persons who attack the United States.

Unlawful combatants: The Geneva Conventions limit the ways regular soldiers who surrender or are captured may be treated, but there is a very clear distinction made between lawful enemy combatants (a member of a standing/recognized army), who would not be subject to a tribunal, and unlawful enemy combatants (civilians who take up arms) who would.

Currently, there are more than 500 persons who are being detained at Guantanamo Bay. They have been classified by the Department of Defense as unlawful enemy combatants, and each one could potentially be subject to a military tribunal. But without legislative backing, any military tribunal adjudication of guilt may later be challenged on the basis that the tribunals were not authorized by Congress. Congressional action would make it abundantly clear that military tribunals are an appropriate venue for trying unlawful enemy combatants. Spelling out the requirements for a military tribunal would ensure that sentences, when they are handed down, could be defended from judicial invalidation.

Due process: My bill would ensure that the basic tenets of due process are adhered to by a military tribunal. The tribunal would be independent and impartial. The accused would be presumed innocent until proven guilty, and would only be found guilty if there was proof beyond a reasonable doubt. The accused would be promptly notified of alleged offenses. The proceedings would be made available to relevant parties in other languages as necessary. The accused would have the opportunity to be present at trial. The accused have the opportunity to confront, cross-examine, and offer witnesses. The proceedings would be expeditious. The accused would be afforded all necessary means of defense. A conviction would be based on proof that the individual was responsible for the offense. A conviction could not be upheld on an act that was not an unlawful offense when it was committed. The penalty for an offense would not be greater than it was when the offense was committed. The accused would not be compelled to confess guilt or testify against himself. A convicted person would be informed of remedies and appeals processes. A preliminary proceeding would be held within 30 days of detention to determine whether a trial may be appropriate. The tribunal would be comprised of a military judge and not less than five members. The death penalty would be applied only by unanimous decision. The accused would have access to evidence supporting each alleged offense, except where disclosure of the evidence would cause identifiable harm to the prosecution of military objectives, and would have the opportunity to both obtain and present exculpatory evidence, and to respond to such evidence.

Habeas corpus: Finally, the writ of habeas corpus would not be infringed, as it is a critical

tenet of our justice system. Every person should be entitled to a court determination of whether he is imprisoned lawfully and whether or not he should be released from custody. This basic tenet dates back to 1215 when it stood in the Magna Carta as a critical individual right against arbitrary arrest and imprisonment.

Courts have referred to habeas corpus as “the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action.” Without judicial review, the police can arrest people without warrants and jail people without trials. U.S. Senator Arlen Specter has noted, “Simply declaring that applying traditional principles of law or rules of evidence is not practical is hardly sufficient. The usual test is whether our national security interests outweigh our due process rights, and the administration has not made the case.”

A careful reading of the President’s military order reveals that “military tribunals shall have exclusive jurisdiction, and the individual shall not be privileged to seek any remedy or maintain any proceeding, directly or indirectly . . . in any court of the United States, or any state thereof, any court of any foreign nation, or any international tribunal.”

Appeals process: Another critical protection we must retain in these trials is that of an appeals process. My bill calls for the Secretary of Defense to promptly review convictions by such tribunals to ensure that the procedural requirements of a full and fair hearing have been met. It also calls for the United States Court of Appeals for the Armed Forces established under the Uniform Code of Military Justice to review the proceedings, convictions, and sentences of such tribunals. Finally, the Supreme Court would review the decisions of the United States Court of Appeals for the Armed Forces. This is the most appropriate system of judicial review, especially since the U.S. Court of Appeals for the Armed Forces would not have to appoint special masters or magistrates to do the necessary fact finding.

Public proceedings: We gain the confidence of our citizenry by ensuring that trial proceedings are open to the public. My bill would require trial and appeal proceedings to be accessible to the public, while securing the safety of observers, witnesses, tribunal judges, counsel, and others. Evidence available from an agency of the Federal Government, however, may be kept secret from the public if such evidence would harm the prosecution of military objectives or intelligence sources or methods.

Detention: The bill allows for the Secretary of Defense to detain a person who is subject to a tribunal consistent with the international law of armed conflict. However these detentions would only be authorized while a state of armed conflict continues, or which a prosecution or a post-trial proceeding is ongoing. Under the Military Tribunals Act of 2002, the United States District Court for the District of Columbia would have exclusive jurisdiction to ensure that the requirements for detaining an accused are satisfied.

And while an accused is held, the detainee shall be treated humanely, without any adverse distinction based on race, color, religion, gender, birth, wealth, or any similar criteria. Adequate food, drinking water, shelter, clothing, and medical treatment shall be provided. Finally, a detainee’s right to the free exercise of religion would not be infringed.

Reports to congress: Without protection and reporting requirements in place, persons detained for an indefinite amount of time would have no recourse. Currently in America, the total number of persons detained by both the Department of Justice and the Department of Defense is unknown. In many cases, there is little information, if any, available about who has been detained and why. My bill requires the President to report annually to Congress on the use of the military tribunal authority. Each such report would include information regarding each person subject to, or detained pursuant to, a military tribunal, and each person detained pursuant to any actual or planned act of terrorism, who has not been referred for trial in connection with that act of terrorism to a criminal court or to a military tribunal. With this provision, we can significantly reduce the danger that due process might be evaded by simply failing to bring detainees before a tribunal for trial.

Conclusion: There is some debate about the necessity of Congressional input in the establishment of military tribunals. But there is no doubt that legislative branch input can provide indispensable safeguards, such as an appeal to an independent entity, that the executive branch simply cannot provide on its own. By exercising Congress' role in the process, we will ensure that our justice system remains a beacon for the rest of the world, where due process is protected, and the accused are afforded basic protections.

We are living in an extraordinary time, a difficult time. But we are defined as a nation by how we handle these difficult times. Our government's words and deeds are important, not only for the legal precedents we set, but also for the message we send to our global neighbors. During this, the most significant international crisis of our day, we have an opportunity to show the world the true meaning of justice, liberty, and the freedoms upon which America was founded.

PRESIDENT'S FORTUNE BUILT ON INSIDER TRADING

The SPEAKER pro tempore (Mr. SHUSTER). Under a previous order of the House, the gentleman from Washington (Mr. McDERMOTT) is recognized for 5 minutes.

Mr. McDERMOTT. Mr. Speaker, I include for the RECORD an article from yesterday's New York Times by Paul Krugman called "Succeeding in Business."

The reason I do this, we have a lot of Members coming here and talking about what is happening with business and the President, and this article told us what was going to happen today. As we watch the news about what President Bush said, remember this: "George Bush is scheduled to give a speech intended to put him in front of the growing national outrage over corporate malfeasance. He will sternly lecture Wall Street executives about ethics and will doubtless portray himself as a believer in old-fashioned business probity.

"Yet this pose is surreal, given the way top officials like Secretary of the Army Thomas White, Dick Cheney and Mr. Bush himself acquired their

wealth. As Joshua Green says in *The Washington Monthly*, in a must-read article written just before the administration suddenly became such an exponent of corporate ethics: "The new tone that George W. Bush brought to Washington isn't one of integrity, but of permissiveness. In this administration, enriching oneself while one's business goes bust is not necessarily frowned upon."

"Unfortunately, the administration has so far gotten the press to focus on the least important question about Mr. Bush's business dealings: His failure to obey the law by promptly reporting his insider trading. It is true that Mr. Bush's story about that failure has suddenly changed four times, but the administration hopes that a narrow focus on the reporting lapses will divert attention from the larger point: Mr. Bush profited personally from aggressive accounting identical to the recent scams that have shocked the Nation.

"In 1986, one would have had to consider Mr. Bush a failed businessman. He had run through millions of dollars of other people's money, with nothing to show for it but a company losing money and heavily burdened with debt. But he was rescued from his failure when Harken Energy bought his company at an astonishingly high price. There is no question that Harken was basically paying for Mr. Bush's connections.

"Despite these connections, Harken did badly. But for a time it concealed its failure, sustaining its stock price, as it turned out, just long enough for Mr. Bush to sell most of his stake at a large profit, with an accounting trick identical to one of the main ploys used by Enron a decade later."

Mr. Speaker, surprisingly, Arthur Andersen was the accountant. The ploy works this way. Corporate insiders create front corporations that seem independent but are really under their control. This front buys some of the firm's assets at unrealistically high prices, creating a phantom profit that inflates the stock price, allowing the executives to cash in their stock.

That is exactly what happened at Harken. A group of insiders, using money borrowed from Harken itself, paid an exorbitant price for a Harken subsidiary, Aloha Petroleum. That created a \$10 million phantom profit which hid three-quarters of the company's losses in 1989. White House aides have played down the significance of this move saying \$10 million is not very much compared with recent scandals. Indeed, it is a small fraction of the apparent profits Halliburton created through a sudden change in accounting procedures during Dick Cheney's tenure as chief executive. But for Harken's stock price and hence Mr. Bush's personal wealth, this accounting trickery made all the difference. Mr. Bush was on the company's audit committee, as well as on the special restructuring committee.

And back in 1994, another member of both committees, E. Stuart Watson, as-

sured reporters that he and Mr. Bush were constantly made aware of the company's finances. If Mr. Bush did not know about the Aloha maneuver, he was a very negligent director. In any case, Mr. Bush certainly found out what his company had been up to when the Securities and Exchange Commission ordered it to restate its earnings, so he cannot really be shocked over recent corporate scams. His own company pulled exactly the same tricks, to his considerable benefit. Of course what really made Mr. Bush a rich man was the investment of those proceeds from Harken in the Texas Rangers, a step that is another equally strange story.

The point is the contrast between image and reality. Mr. Bush portrays himself as a regular guy, someone ordinary Americans can identify with, but his personal fortune was built on privilege and insider dealings, and after his Harken sale, on large-scale corporate welfare. Some people have it easy.

Mr. Speaker, this is the man who went down there and said we are going to clean this thing up. We are going to have a task force on corporate fraud. The fox went down to the chicken house and said to the other foxes, hey, I know how to run this hen house, and I am going to show you.

This guy, can we expect him really, really, after that story, and this is not me talking, this is a columnist for the New York Times.

Mr. Speaker, most people who watch television tonight will see about 19 seconds of the President saying, I am going to be tough on corporate fraud. They will think it is for real because they will not know the story behind the man, what he really did. That is why I took the time to come down and read this. I feel like an old-fashioned news reader on television. Now everything has to be snap, snap and Americans never learn what is really going on.

This President is running a game on us, and the pensions and investments of people are at risk as long as he refuses to put people on the SEC to stop it.

The article previously referred to is as follows:

[From the New York Times, July 7, 2002]

SUCCEEDING IN BUSINESS

(By Paul Krugman)

George W. Bush is scheduled to give a speech intended to put him in front of the growing national outrage over corporate malfeasance. He will sternly lecture Wall Street executives about ethics and will doubtless portray himself as a believer in old-fashioned business probity.

Yet this pose is surreal, given the way top officials like Secretary of the Army Thomas White, Dick Cheney and Mr. Bush himself acquired their wealth. As Joshua Green says in *The Washington Monthly*, in a must-read article written just before the administration suddenly became such an exponent of corporate ethics: "The 'new tone' that George W. Bush brought to Washington isn't one of integrity, but of permissiveness. . . . In this administration, enriching oneself while one's