their property if an endangered species is found on the land.

Under last year's Supreme Court decision in Kelo, state and local governments now can take property from a private landowner in order to give or sell it to another private owner. So, we need to make sure Americans can protect their private property ownership.

The Private Property Rights Implementation Act of 2006 clarifies current law in order to give America's property owners those tools.

For instance, H.R. 4772 corrects an anomaly created by two Supreme Court decisions that prevents a property owner from having their federal takings claim decided in Federal Court without first pursuing the case in state court.

And the legislation clarifies that the standard for due process claims in a takings case is ''arbitrary and capricious'' and not the much higher ''shocks the conscience'' standard that some courts are using and that almost no property rights case can meet.

The bill also clarifies what constitutes a ''final decision'' on an acceptable land use from a regulatory agency for purposes of being able to take the claim to federal court.

Some regulatory agencies have avoided making such ''final decisions'' in order to prevent the property owner from moving forward with the property rights claim.

H.R. 4772 is a good bill that will protect Americans' property rights.

Mr. Speaker, I thank Congressman CHABOT for offering this legislation, and urge my colleagues to support it.

Mrs. MALONEY. Mr. Speaker, I rise today in opposition to H.R. 4772, the ''Private Property Rights Implementation Act.''

This bill strips local governments of their authority to enforce zoning regulations by allowing real estate developers to bypass the State courts and go directly to Federal courts to challenge local zoning decisions. While I strongly believe in the rights of property owners, zoning is an important tool of local governments to maintain livable communities where residents and businesses can coexist.

The city of New York opposes this legislation because it would intrude upon its authority over local land decisions. Additionally, this bill is opposed by a coalition of groups including the League of Conservation Voters, the National League of Cities, the U.S. Conference of Mayors, and the National Conference of State Legislatures.

I am puzzled about why the Republican Majority feels that this bill should be voted on before we adjourn when there are so many other issues like increasing the minimum wage and implementing the recommendations of the 9/11 Commission that have yet to be considered by this body.

I urge my colleagues to vote ''no.''

Ms. JACKSON-LEE of Texas. Mr. Speaker, I thank the gentleman for yielding. I appreciate this opportunity to explain my concerns with the bill, H.R. 4772, the Private Property Rights Implementation Act of 2005. I oppose the bill because I am concerned that it will weaken local land use, zoning, and environmental laws by encouraging costly and unwarranted ''takings'' litigation in Federal court against local officials.

Mr. Chairman, H.R. 4772 would fundamentally alter the procedures governing regulatory takings litigation. Those procedures are required by the U.S. Constitution and have been repeatedly reaffirmed by the U.S. Supreme Court, as recently as last year. The bill purports to alter these requirements by giving developers, corporate hog farms, adult bookstores, and other takings claimants the ability to bypass local land use procedures and State courts. Indeed, the National Association of Home Builders candidly referred to a prior version of the bill as a ''hammer to the head'' of local officials. Developers could use this hammer to side-step land use negotiations and avoid compliance with local laws that protect neighboring property owners and the community at large.

In addition, section 5 of the bill purports to dramatically change substantive takings law as articulated by the Supreme Court and other Federal courts by redefining the constitutional rules that apply to permit conditions, subdivisions, and claims under the Due Process Clause. The existing rules, developed over many decades, allow courts to strike a fair balance between takings claimants, neighboring property owners, and the public. The proposed rules would tilt the playing field further in favor of corporate developers and other takings claimants, even in the many localities across the country where developers already have an advantage.

As a result, H.R. 4772 would allow big developers and other takings claimants to use the threat of premature Federal court litigation as a club to coerce small communities to approve projects that would harm the public. By short-circuiting local land use procedures, H.R. 4772 also would curtail democratic participation in local land use decisions by the very people who could be harmed by those decisions.

The bill also raises serious constitutional issues. The provisions that purport to redefine constitutional violations ignore the fundamental principle established in Marbury v. Madison (1803) that it is ''emphatically the province and duty'' of the Federal courts to interpret the meaning of the Constitution. Moreover, under longstanding precedent, a landowner has no claim against a State or local government under the Fifth Amendment until the claimant first seeks and is denied compensation in State court. Federal courts would continue to dismiss these claims, as well as claims that lack an adequate record where claimants use the bill to side-step local land use procedures. The bill will create more delay and confusion by offering the false hope of an immediate Federal forum for those who have not suffered a Federal constitutional injury. In short, this bill is a great threat to federalism, our local land use protections, neighboring property owners, and the environment. Therefore, I urge my colleagues to vote against the bill.

The SPEAKER pro tempore. The gentleman's time has expired.

Mr. SENSENBRENNER. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. Pursuant to House Resolution 1054, the previous question is ordered on the bill, as amended.

The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. NADLER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this question will be postponed.

MESSAGE FROM THE SENATE

A message from the Senate by Ms. Curtis, one of its clerks, announced that the Senate agrees to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 5631) ''An Act making appropriations for the Department of Defense for the fiscal year ending September 30, 2007, and for other purposes.''.

MILITARY COMMISSIONS ACT OF 2006

Mr. SENSENBRENNER. Mr. Speaker, pursuant to House Resolution 1054, I call up the Senate bill (S. 3930) to authorize trial by military commission for violations of the law of war, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The text of the Senate bill is as follows:

S. 3930

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

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

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

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

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

SEC. 3. MILITARY COMMISSIONS.

(a) MILITARY COMMISSIONS.—

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

"CHAPTER 47A—MILITARY COMMISSIONS

''SUBCHAPTER I—GENERAL PROVISIONS

"§ 948a. Definitions

''In this chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

"§ 948b. Military commissions generally

''(a) PURPOSE.—This chapter establishes procedures governing the use of military commissions to try alien unlawful enemy combatants engaged in hostilities against the United States for violations of the law of war and other offenses triable by military commission.

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

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

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

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

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

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

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

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

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

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

"§ 948c. Persons subject to military commissions

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

"§ 948d. Jurisdiction of military commissions

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

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

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

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

"§ 948e. Annual report to congressional committees

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

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

''SUBCHAPTER II—COMPOSITION OF MILITARY COMMISSIONS

"§ 948h. Who may convene military commissions

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

"§ 948i. Who may serve on military commissions

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

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

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

"§ 948j. Military judge of a military commission

''(a) DETAIL OF MILITARY JUDGE.—A military judge shall be detailed to each military

commission under this chapter. The Secretary of Defense shall prescribe regulations providing for the manner in which military judges are so detailed to military commissions. The military judge shall preside over each military commission to which he has been detailed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

''(2) a civilian who—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

''(1) as a result of challenge;

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

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

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

''SUBCHAPTER III—PRE-TRIAL PROCEDURE

''§ 948q. Charges and specifications

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

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

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

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

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

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

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

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

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

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

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

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

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

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

''§ 948s. Service of charges

''The trial counsel assigned to a case before a military commission under this chapter shall cause to be served upon the accused

and military defense counsel a copy of the charges upon which trial is to be had. Such charges shall be served in English and, if appropriate, in another language that the accused understands. Such service shall be made sufficiently in advance of trial to prepare a defense.

''SUBCHAPTER IV—TRIAL PROCEDURE

''§ 949a. Rules

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

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

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

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

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

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

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

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

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

''(C) A statement of the accused that is otherwise admissible shall not be excluded from trial by military commission on grounds of alleged coercion or compulsory self-incrimination so long as the evidence complies with the provisions of section 948r of this title.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

''(A) is a United States citizen;

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

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

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

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

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

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

''(6) The accused is not entitled to be represented by more than one military counsel.

However, the person authorized under regulations prescribed under section 948k of this title to detail counsel, in that person's sole discretion, may detail additional military counsel to represent the accused.

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

''§ 949d. Sessions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

''(f) PROTECTION OF CLASSIFIED INFORMATION.—

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

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

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

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

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

''(2) INTRODUCTION OF CLASSIFIED INFORMATION.—

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

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

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

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

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

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

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

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

''§ 949e. Continuances

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

''§ 949f. Challenges

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

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

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

''§ 949g. Oaths

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

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

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

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

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

''§ 949h. Former jeopardy

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

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

''§ 949i. Pleas of the accused

''(a) ENTRY OF PLEA OF NOT GUILTY.—If an accused in a military commission under this

chapter after a plea of guilty sets up matter inconsistent with the plea, or if it appears that the accused has entered the plea of guilty through lack of understanding of its meaning and effect, or if the accused fails or refuses to plead, a plea of not guilty shall be entered in the record, and the military commission shall proceed as though the accused had pleaded not guilty.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

''(a) AFFIRMATIVE DEFENSE.—It is an affirmative defense in a trial by military commission under this chapter that, at the time of the commission of the acts constituting the offense, the accused, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of the acts. Mental disease or defect does not otherwise constitute a defense.

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

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

''(1) guilty;

''(2) not guilty; or

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

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

''§ 949l. Voting and rulings

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

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

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

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

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

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

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

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

''§ 949m. Number of votes required

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

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

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

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

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

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

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

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

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

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

''§ 949n. Military commission to announce action

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

''§ 949o. Record of trial

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

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

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

''SUBCHAPTER V—SENTENCES

"§ 949s. Cruel or unusual punishments prohibited

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

"§ 949t. Maximum limits

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

"§ 949u. Execution of confinement

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

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

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

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

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

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

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

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

"§ 950b. Review by the convening authority

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"§ 950d. Appeal by the United States

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

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

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

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

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

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

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

this section, the Court may act only with respect to matters of law.

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

''§ 950e. Rehearings

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

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

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

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

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

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

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

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

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

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

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

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

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

''(a) EXCLUSIVE APPELLATE JURISDICTION.—(1)(A) Except as provided in subparagraph (B), the United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction to determine the validity of a final judgment rendered by a military commission (as approved by the convening authority) under this chapter.

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

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

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

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

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

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

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

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

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

''§ 950h. Appellate counsel

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

''SUBCHAPTER VII—PUNITIVE MATTERS

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

''§ 950p. Statement of substantive offenses

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

''(b) EFFECT.—Because the provisions of this subchapter (including provisions that incorporate definitions in other provisions of

law) are declarative of existing law, they do not preclude trial for crimes that occurred before the date of the enactment of this chapter.

"§ 950q. Principals

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

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

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

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

"§ 950r. Accessory after the fact

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

"§ 950s. Conviction of lesser included offense

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

"§ 950t. Attempts

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

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

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

"§ 950u. Solicitation

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

"§ 950v. Crimes triable by military commissions

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

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

''(A) combatants; and

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

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

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

''(2) PROTECTED PERSON.—The term 'protected person' means any person entitled to protection under one or more of the Geneva Conventions, including—

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

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

''(C) military medical or religious personnel.

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

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

''(A) collateral damage; or

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

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

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

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

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

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

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

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

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

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

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

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

''(11) TORTURE.—

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

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

''(12) CRUEL OR INHUMAN TREATMENT.—

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

''(B) DEFINITIONS.—In this paragraph:

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

''(I) a substantial risk of death;

''(II) extreme physical pain;

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

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

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

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

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

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

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

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

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

''(i) a substantial risk of death;

''(ii) extreme physical pain;

''(iii) protracted and obvious disfigurement; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) EXCLUSION OF APPLICABILITY TO CHAPTER 47A COMMISSIONS.—Sections 821, 828, 848, 850(a), 904, and 906 (articles 21, 28, 48, 50(a), 104, and 106) are amended by adding at the

end the following new sentence: ''This section does not apply to a military commission established under chapter 47A of this title.''.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 6. IMPLEMENTATION OF TREATY OBLIGATIONS.

(a) IMPLEMENTATION OF TREATY OBLIGATIONS.—

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

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

(3) INTERPRETATION BY THE PRESIDENT.—

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

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

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

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

(4) DEFINITIONS.—In this subsection:

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

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

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

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

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

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

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

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

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

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

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

''(d) COMMON ARTICLE 3 VIOLATIONS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

''(i) a substantial risk of death;

''(ii) extreme physical pain;

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

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

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

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

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

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

''(A) collateral damage; or

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

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

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

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

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

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

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

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

SEC. 7. HABEAS CORPUS MATTERS.

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

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

''(2) Except as provided in paragraphs (2) and (3) of section 1005(e) of the Detainee Treatment Act of 2005 (10 U.S.C. 801 note), no court, justice, or judge shall have jurisdiction to hear or consider any other action against the United States or its agents relating to any aspect of the detention, transfer, treatment, trial, or conditions of confinement of an alien who is or was detained by the United States and has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.''.

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

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

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

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

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

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

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

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

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

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

SEC. 9. REVIEW OF JUDGMENTS OF MILITARY COMMISSIONS.

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

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

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

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

(3) in subparagraph (C)—

(A) in clause (i)—

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

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

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

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

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

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

The SPEAKER pro tempore. Pursuant to House Resolution 1054, debate shall not exceed 1 hour, with 40 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Armed Services and 20 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary.

The gentleman from California (Mr. HUNTER) and the gentleman from Missouri (Mr. SKELTON) each will control 20 minutes and the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from Michigan (Mr. CONYERS) each will control 10 minutes.

The Chair recognizes the gentleman from California.

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GENERAL LEAVE

Mr. HUNTER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on S. 3930.

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

There was no objection.

Mr. HUNTER. Mr. Speaker, I yield myself such time as I may consume, and I rise in support of S. 3930, the Military Commissions Act of 2006.

Mr. Speaker, as we debated this bill just a few hours ago, again, I say that I can't think of any better way to honor the fifth anniversary of September 11 than by establishing a system to prosecute the terrorists who on that day murdered thousands of civilians and who continue to seek to kill Americans both on and off the battlefield.

Mr. Speaker, I think that Justice Thomas described best the backdrop against which this legislation is being considered when he said, and I quote, ''We are not engaged in a traditional battle with a nation state but with a worldwide hydra-headed enemy who lurks in the shadows conspiring to reproduce the atrocities of September 11, 2001, and who has boasted of sending suicide bombers into civilian gatherings, has proudly distributed videotapes of beheadings of civilian workers, and has tortured and dismembered captured American soldiers.''

So, Mr. Speaker, we have debated this precisely, this bill, which is precisely the same coming back over from the other body as the bill that we voted on in the full House, where I think we had a robust debate on the issues. But I would just say that this gives us a new body of law that provides a construct under which we can carry out our charge.

And this is an interesting charge to this body and to both Houses of Congress. We were not only requested to do this by the President, but the Supreme Court in the Hamdan case essentially invited, in fact said that we were an essential part of the construct of any tribunal legislation that would set up the new tribunal process; that it had to be a construct that was participated in by

Congress. So you could say, I think, Mr. Speaker, that we have been charged not just by the President but by the Supreme Court with doing our job and putting together this process.

We have pursued the terrorists across the globe. We have captured some, and we have killed many. We have pursued them literally to the ends of the earth. We have caught them at 10,000 foot elevation mountain ranges in caves where they thought they were safe, in so-called safe houses that turned out not to be safe houses. We captured some who, according to our intelligence personnel, helped to design the attack against New York and Washington, DC, and Pennsylvania. And I can think of no more important way to memorialize 9/11 than to produce a justice system that allows us to bring to justice, to bring to the courthouse and show justice to the widows and orphans of 9/11, to the American people, to our fellow citizens and to the world. This system is going to allow us to do this.

This system is a product of extensive negotiations, hundreds of provisions that have been agreed upon and worked and looked at by counsel for both this body, the other body, the U.S. Senate and, of course, the administration. I think it is sound. I think it is solid. I think it will allow for the expeditious prosecution of people who attacked our country.

It gives them a lot of rights. It gives a lot of rights to the terrorists that they would never have in their native land. It also gives them rights that American soldiers don't have. There is no American soldier that has the right to an attorney, to a combatant status review and, if he doesn't like that review, to an appellate court, like the D.C. Circuit Court, to prove that he really was not a combatant in that particular conflict.

So as the American people watch these trials unfold, Mr. Speaker, and they watch the defendants, including some of the people who hurt our country and helped to cause the death of thousands of Americans, they are going to watch them with their taxpayer-paid-for attorneys exercising their rights against self-incrimination, their right to a proof standard beyond a reasonable doubt; they are going to watch a jury system or a commission system that uses a secret ballot so that superior officers can't influence junior officers; they are going to watch all these safeguards that we put in place for justice, and I think the American people are going to say, although there will be some who will say they still didn't have enough rights, but I think the American people will come down on the side of what we have done here in the House.

Mr. Speaker, I rise in support of S. 3930, the ''Military Commissions Act of 2006.'' I can think of no better way to honor the fifth anniversary of September 11th than by establishing a system to prosecute the terrorists who, on that day, murdered thousands of innocent civilians, and who continue to seek to kill Americans both on and off the battlefield.

This is vital legislation important to the national security of the United States.

Our foremost consideration in writing this legislation is to protect American troops and American citizens from harm.

The war against terror has produced a new type of battlefield and a new type of enemy. How is it different? We are fighting a ruthless enemy who does not wear a uniform. A savage enemy who kills civilians, women and children and then boasts about it. A barbaric enemy who beheads innocent civilians by sawing their heads off. An uncivilized enemy who does not acknowledge or respect the laws of war, the Geneva Conventions or any of the guarantees which are recognized by civilized nations.

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

How is the battlefield new? First, it will be a long war. We don't know if this enemy will be defeated this decade, the next decade, or even longer than that. Second, in this new war, where intelligence is more vital than ever, we want to interrogate the enemy. Not to degrade them, but to save the lives of American troops, American civilians, and our allies. But it is not practical on the battlefield to read the enemy their Miranda warnings. On the battlefield we can't have battalions of lawyers. Finally, this is an ongoing conflict and sharing sensitive intelligence sources, methods and other classified information with terrorist detainees could be highly dangerous to national security. I am not prepared to take that risk.

So what we have done is to develop a military commission process that will allow for the effective prosecution of enemy combatants during this ongoing conflict. Without this action, United States has no effective means to try and punish the perpetrators of September 11th, the attack on the USS *Cole* and the embassy bombings.

We provide basic fairness in our prosecutions, but we also preserve the ability of our warfighters to operate effectively on the battlefield.

I think a fair process has two guiding principles:

First, the government must be able to present its case fully and without compromising its intelligence sources or compromising military necessity; and

Second, the prosecutorial process must be done fairly, swiftly and conclusively.

Who are we dealing with in military commissions? We are dealing with the enemy in war, not defendants in our domestic criminal justice system. Some of them have returned to the battlefield after we let them out of Guantanamo. Our primary purpose is to keep them off the battlefield. In doing so, we treat them humanely and if we choose to try them as war criminals we will give them due process rights that the world will respect. But we have to remember they are the enemy in an ongoing war.

In time of war it is not practical to apply to rules of evidence that we do in civilian trials or court-martials for our troops. Commanders and witnesses can't be called from the frontline to testify in a military commission. We need to accommodate rules of evidence, chain of custody and authentication to fit the exigencies of the battlefield. If hearsay is reliable we should use it. If sworn affidavits are reliable, we should use them. I note that the rules of evidence are relaxed in international war crime tribunals for Rwanda and Yugoslavia.

The Supreme Court has suggested that Congress act here to fill the legal void left by the Hamdan decision, but in doing so let's not forget our purpose is to defend the nation against the enemy. We won't lower our standards, we will always treat detainees humanely, but we can't be naive either.

This war started in 1996 with the al Qaeda declaration of jihad against the United States. The Geneva Conventions were written in 1949 and the UCMJ was adopted in 1951. These documents were not written to address the war we are now fighting. In that sense, what we are required to do after Hamdan is broader than war crimes trials, it is the start of a new legal analysis for the long war. It is time for us to think about war crime trials and a process that provides due process and protects national security in the new war.

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

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

Right to Counsel, provided by government at trial and throughout appellate proceedings;

Impartial judge;

Presumption of innocence;

Standard of proof beyond a reasonable doubt;

The right to be informed of the charges against him as soon as practicable;

The right to service of charges sufficiently in advance of trial to prepare a defense;

Mr. Speaker, since I am inserting my entire text in the RECORD, I will not read them all at this point.

The right to reasonable continuances;

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

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

Right to enter a plea of not guilty;

The right to obtain witnesses and other evidence;

The right to exculpatory evidence as soon a practicable;

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

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

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

Right against compulsory self-incrimination;

Right against double jeopardy;

The defense of lack of mental responsibility;

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

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

⅔ vote of members required for conviction; ¾ vote required for sentences of life or over ten years; unanimous verdict required for death penalty;

Verbatim authenticated record of trial;

Cruel or unusual punishments prohibited;

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

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

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

We provide all of these rights, and we give them an independent judge, and the right to at least two appeals, including the U.S. Court of Appeals for the District of Columbia and access to the Supreme Court. No one can say this is not a fair system.

I know some of my colleagues are concerned about the issue of reciprocity. I ask them to look at the list of rights I just summarized. And also keep in mind, that these are rights for terrorists. If we are talking about true reciprocity, then we are only concerned about how the enemy will treat American terrorists. These are not our rules for POWs. We treat the legitimate enemy differently and expect them to treat our troops the same.

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

In this bill we provide standards for the admission of evidence, including hearsay evidence and other statements, that are adapted to military exigencies and provide the military judge the necessary discretion to determine if the evidence is reliable and probative.

I want to talk a little bit about how we handle classified evidence. We had three hearings on this bill in addition to briefings and meetings with experts. I asked every witness the same question. If we have an informant, either a CIA agent or an undercover witness of some sort, are we going to tell Kalid Sheik Mohammad who the informant is? This legislation does not allow KSM to learn the identity of the informant. After several twists and turns in the road, after meeting with the Senate and the White House in marathon sessions over the weekend, we have crafted a solution that does not allow the KSM to learn the identify of the informant, yet provides a fair trial. How do we do this? We address this in Section 949d(f) of Section 3. Classified evidence is protected and is privileged from disclosure to the jury and the accused if disclosure would be detrimental to national security. The accused is permitted to be present at all phases of the trial and no evidence is presented to the jury that is not also provided to the accused.

Section 949d(f) makes a clear statement that sources, methods, or activities will be protected and privileged and not shown to the accused, however, the substantive findings of the sources, methods, or activities will be admissible in an unclassified form. This allows the prosecution to present its best case while protecting classified information. In order to do this, the military judge questions the informant outside the presence of the jury and the defendant. In order to give the jury and the defendant a redacted version or the infornant's statement, the just must find: (1) that the sources, methods, or activities by which the U.S. acquired the evidence are classified and (2) the evidence is reliable. Once the judge stamps the informant as reliable, the informant's redacted statement is given to both the jury and the accused. It removes the confrontation issue, yet allows the accused to see the substance of the evidence against him. I think these rules protect classified evidence and yet preserve a fair trial.

Unauthorized disclosures, not only of classified information, but also of our interrogation techniques, are extremely damaging to our intelligence efforts. Our personnel have encountered enemy combatants trained to resist disclosed interrogation techniques thanks to leakers in our media. I'm pleased that with the current Military Commission legislation moving forward, we have reaffirmed our strict adherence to the U.S. anti-torture laws, while at the same time allowing our CIA to move forward with an effective interrogation program whose techniques will not be published in the Federal Register, or God forbid, in another newspaper disclosure. This legislation preserves the necessary flexibility for the President and the CIA to utilize all lawful and effective methods of interrogation. Let me be clear: the bill defines the specific conduct that is prohibited under Common Article 3, but it does not purport to identify interrogation practices to the enemy or to take any particular means of interrogation off the table. Rather, this legislation properly leaves the decision as to the methods of interrogation to the President and to the intelligence professionals at the CIA, so that they may carry forward this vital program that, as the President explained, serves to gather the critical intelligence necessary to protect the country from another catastrophic terrorist attack.

One other point I want to make for the record. As I mentioned earlier, we have modified the rules of evidence to adapt to the battlefield. One of the principles used by the judiciary in criminal prosecutions of our citizens is called the ''fruit of the poisonous tree doctrine.'' The rule provides that evidence derived from information acquired by police officials or the government through unlawful means is not admissible in a criminal prosecution. I want to make it clear that it is our intent with the legislation not to have this doctrine apply to evidence in military commissions. While evidence obtained improperly will not be used directly against an accused, we will not limit the use of any evidence derived from such evidence. The deterrent effect of the exclusionary rule is not something that our soldiers consider when they are fighting a war. The theory of the exclusionary rule is that if the constable blunders, the accused will not suffer. However, we are not going to say that if the soldier blunders, we are not going to punish a savage terrorist. Some rights are reserved for our citizens. Some rights are reserved for civilized people.

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

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

Section 6 of the bill amends 18 U.S.C. Section 2441, the War Crimes Act to criminalize grave breaches of common Article 3 of the Geneva Conventions. As amended, the War Crimes Act will fully satisfy our treaty obligations under common Article 3. This amendment is necessary because currently Section (c)(3) of the War Crimes Act defines a war crime as any conduct which constitutes a violation of Common Article 3. Common Article 3 prohibits some actions that are universally condemned, such as murder and torture but also prohibits ''outrages upon personal dignity'' and ''humiliating and degrading treatment,'' phrases which are vague and do not provide adequate guidance to our personnel. Since violation of Common Article 3 is a felony under the War Crimes Act, it is necessary to amend it to provide clarity and certainty to the interpretation of this statute. The surest way to achieve that clarity and certainty is to define a list of specific offenses that constitute war crimes punishable as grave violations of Common Article 3. This is something we need now, because of the Hamdan decision.

Section 6 of the bill also provides that any detainee under the custody or physical control of the United States will not be subject to ''cruel, inhuman or degrading treatment or punishment'' prohibited by the Fifth, Eighth and Fourteenth Amendments to the Constitution, as defined by the U.S. reservations to the UN Convention against Torture. This defines our obligations under Common Article 3 by reference to the U.S. constitutional standard adopted by the Detainee Treatment Act of 2005.

Section 7 of the bill addresses the question of judicial review of claims by detainees by amending 28 U.S.C. Section 2241 to clarify the intent of the Detainee Treatment Act of 2005 to limit the right of detainees to challenge their detention. The practical effect of this amendment will be to eliminate the hundreds of detainee lawsuits that are pending in courts throughout the country and to consolidate all detainee treatment cases in the D.C. Circuit. However, I want to stress that under this provision detainees will retain their opportunity to file legitimate challenges to their status and to challenge convictions by military commissions. Every detainee under confinement in Guantanmo Bay will have their detention reviewed by the U.S. Court of Appeals for the District of Columbia.

Mr. SENSENBRENNER and my other colleagues are going to speak on the rest of the bill, but before I finish I want to make one point very clear. This legislation does not condone or authorize torture in any way. In fact, we make it a war crime, punishable by death, for one of our soldiers or interrogators to torture someone to death. Let me emphasize this again. In Section 6 of this bill, we amend 18 U.S.C. 2441, the War Crimes Act. In this amendment we explicitly provide that torture inflicted upon a person in custody for the purpose of obtaining information is a war crime for which we may prosecute one of our own citizens. While most of this legislation deals with how we handle the enemy, I want to make it crystal clear that nothing in what we are doing condones or allows torture in any way.

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

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

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

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

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

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

I believe that the Constitution, which provides the fundamental, underlying protections for the citizens of the United States, provides more than sufficient protections for unlawful enemy combatants. Why should accused terrorist enjoy protections that exceed what the Constitution provides to United States citizens?

Mr. Speaker, in summary, I believe that this legislation is the best way to prosecute enemy terrorists and to protect U.S. Government personnel and service members who are fighting them.

I urge my colleagues to support this vital legislation.

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

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

The history of tribunals goes back to during and after the Second World War: The German saboteurs who were captured at Ponte Verde, Florida, and Long Island were tried before a tribunal; the Japanese leaders who carried out such inhumane treatment toward the American soldiers and prisoners of war, among them General Yamashita and General Tojo; and, of course, the Nuremberg trials held in Nuremberg, Germany, after the war of the Nazis who perpetrated those various crimes.

Now, here we are trying to establish a tribunal or a commission, which we should do and need to do. The Supreme Court, as a result of the Hamdan decision, said that we in Congress need to do it as opposed to an Executive Order. But what we needed to do was to be tough on terrorists. And being a former prosecuting attorney and knowing that the specter that hangs over every prosecutor's head is that a hard-won victory in court will be overturned by an appellate court or by a Supreme Court, we should be tough on the terrorists; not just tough on them with the law but tough on them with certainty, not giving the opportunity through legislation for the overturning of a conviction.

Now, as you know, Mr. Speaker, there are two ways in which a conviction may be overturned. Number one is on the evidence; a mistake made by the judge or a comment made by the prosecutor. On the other hand, someone may have their conviction overturned in the event that the law upon which the conviction is based is unconstitutional. In my debate and comments recently, I pointed out some seven areas of constitutional uncertainty which may very well cause a reversal of a conviction. Consequently, I think this bill before us, as I have said before, is flawed and that will cause us not only to be not tough but to be uncertain that these convictions will be upheld.

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

Mr. HUNTER. Mr. Speaker, I will yield myself such time as I may consume to say, first, that I appreciate the gentleman's participation in the hearings and the briefings and the markup that we had on the initial bill that came out of the Armed Services Committee 52–8, and I would remind my colleagues that, in fact, the appellate route in this particular bill provides for the court of military review, a new court to be set up as a first appellate stop; and secondly, the D.C. Circuit Court. And in channeling all of the actions to the D.C. Circuit Court, we are going to a court that has lots of experience, is building a body of experience in this type of work, and that will keep us from rifle-shooting actions out throughout the country.

I think that makes for an efficient process, and it provides now two appellate reviews, whereas the Democrat substitute had only one appellate review before you would apply for final review by the Supreme Court, which might or might not occur. So instead of one review, we have two reviews. And I think that that is a strengthening, if you will, of this bill that is one more measure to ensure that as we move forward on this process of bringing to justice those who attacked our country, we give them a robust right of appeal.

Having said that, Mr. Speaker, I yield 5 minutes to the gentleman from Indiana (Mr. BUYER), who is the chairman of the Veterans' Affairs Committee and a former JAG officer himself.

Mr. BUYER. Mr. Speaker, I thank the gentleman for yielding. I was a good listener to my colleague, Mr. SKELTON, and we have worked very well over the years. Sometimes we disagree, but I think more times we agree than disagree.

In review of the section, though, I would say to my good friend from Missouri that, with regard to how individuals are tried, I have worked with the administration and the Senate and with my good friend LINDSEY GRAHAM. When you start this legislative process, Mr. SKELTON, and you start with five amendments and you end up with a colloquy, some good things must have happened in the process. So I just want my good friend from Missouri to know that a lot of the concerns I had have been worked out with Mr. HUNTER, with his cooperation, and with the Senate and with the administration.

I know some of you have some concerns that didn't get worked out, and I can understand that and I can relate to the gentleman, but with regard to a process here, the Supreme Court struck down the tribunals, said the Congress needs to act on this to come up with a process, and when I examined this, we took some of the best, not only of our own legal system, but we took some of the best out of the UCMJ, and we took some of the best out of the world court to create the military commissions.

So, now, when you look at title 18, the first chapter will be the Federal criminal code that will apply to United States citizens. The second chapter then is the UCMJ, and the third chapter will now be the Code of Military Commissions. In my judgment, the Code of Military Commissions is in fact a process that will reflect America's values, and it will be balanced against the protection of our national security, and it has indispensable judicial guarantees that are recognized by the world.

The Supreme Court, yes, they will examine our commissions, no differently than how they examine the tribunals, but I am left in an area of good comfort, and that is my counsel that I now give to my country, of 26 years' experience not only as a military JAG officer but also the 14 years here helping lead our country. I am

comfortable with regard to this process, not only if I were the military prosecutor but even if I were the military defense counsel, about the protections that we are affording not only this unlawful enemy combatant but making sure that we have a balance of interests.

Yesterday, on the floor, a couple of our colleagues had raised some issues as to whether American citizens could be subject to the Code of Military Commissions and whether or not, if an American citizen was even classified as an enemy combatant, could they then be subject to a military tribunal. The answer is no. American citizens cannot. Mr. HUNTER has made it very clear in this language.

So even a strict constructionist, when they read this language in the Supreme Court, it is very clear. Section 948 says this does not apply to American citizens; that it only applies to aliens. But let's go with an example: Let's say an American citizen has been arrested for aiding and abetting a terrorist, maybe even participating in a conspiracy, or maybe participating in an action that harmed or killed American citizens.

□ 1215

That American citizen cannot be tried in the military commission. His coconspirators could be tried in a military commission if they were an alien, but if that other coconspirator is an American citizen, they will be prosecuted under title 18 of the first chapter of a Federal crime, or even we could assimilate the State laws under the Assimilated Crimes Act.

I am trying to go into details, and I want to share with the American people here beyond the rhetoric that sometimes you hear on the floor, that with regard to the process itself, I am very comfortable with the fact that American citizens cannot be tried in this.

The reason I am spending a little time on it is that there was an editorial that went out there by a law professor published in the Los Angeles Times. Let me tell you, as a lawyer myself, just because a law professor says it, I am going to tell you what: not necessarily true.

I read his editorial, and I also then looked at the law. Let me now speak unto the law professor: read the bill. Just like what you would do to your law students, you would tell them to read the bill. And when you read the bill and when you open it up, you would find that the words you wrote so that the readers in Southern California would somehow take what, action, or give you credit or credence to your words, your words are false. And that is completely unfortunate.

So hopefully people will begin to understand that this whole issue about these military commissions applying to American people is not true at all.

In the end, let me thank Mr. HUNTER on a good work product. I do wish that, in the end, that this really could have been a product, Mr. SKELTON, that the two of you could have brought together. I don't know what happened there, because I have such respect for both of you.

Mr. SKELTON. Mr. Speaker, I yield 3 minutes to the gentleman from New York (Mr. NADLER).

Mr. NADLER. Mr. Speaker, I am not going to get into any of the torture aspects of this bill, but I do want to address the due process aspects of this bill.

The distinguished chairman says we have created a system of justice with plenty of rights. Well, we have created two systems of justice. First of all, it doesn't have so many rights. You can appeal from the military tribunal, but the military tribunal can hear hearsay evidence and it can hear evidence obtained under coercion, if not torture. That is debatable.

But the appeal is only on matters of law, not fact. So if it is determined that it is you and not someone whose name is similar to you who is the unlawful enemy combatant by the military tribunal, you can't appeal that decision. You can only appeal the process of that decision. The civilian courts have nothing to say on questions of fact. That is number one.

Number two, much more important, the President under this bill has the ability, or Federal bureaucrats, for that matter, to point their finger at anybody in this country or abroad, as long as he is not a citizen, and say you are an enemy combatant because I say so; and because I say so, we are going to throw you in jail forever and you have no right to have a military commission. We may put you before a military commission, in which case what they were talking about applies. We may put you before a combat status review tribunal, in which case what they were talking about applies; but there is no right to do that.

The bill specifically says that this whole process is exempt from the speedy trial requirements of law. So you may be in jail forever because your name was similar to the real guy.

The bill assumes that we need not have the normal protections that we have had since the Magna Carta for people to at least say habeas corpus; bring the body, sir King, before the magistrate to make sure you have the right guy, to make sure there is some basis for holding this person and depriving him of liberty.

There is no such right. This person can be in jail forever without ever going to a military tribunal, without ever going to a combat status review tribunal, without anything.

This, Mr. Speaker, is irrelevant and unconstitutional. This is un-American. It is against all our traditions, to be able to say that people have no rights. It specifically says you have no right to go to any court, a military tribunal or a regular court, to protest that you are being tortured or to allege that you are being tortured. You can't get into court. If you are being tortured, too bad. No one knows about it.

Secondly, you cannot go to court to say they got the wrong guy, because cops never make mistakes, no one ever makes a mistake.

And, finally, the bill is also unconstitutional because it sets up two systems of justice. If you pick up two people in New York, one of them is a citizen, they go to the Federal court, and you accuse them of being unlawful enemy combatants, they go to the regular American system of justice. One is awaiting citizenship but is a permanent resident, he goes through this other. He has no rights and can be in jail forever. That is clearly unconstitutional. It is a denial of equal protection.

Mr. HUNTER. Mr. Speaker, I yield 1 minute to the gentleman from Indiana (Mr. BUYER).

Mr. BUYER. Mr. Speaker, when the gentleman says the President can make any determination he wanted with regard to status, I would just like the gentleman to know that the determination of one's status is done by a tribunal under article V of the Geneva Conventions.

Mr. NADLER. Mr. Speaker, will the gentleman yield?

Mr. BUYER. I yield to the gentleman from New York.

Mr. NADLER. It is supposed to be done by a tribunal under article V, but the President claims the power. We have never held such a tribunal.

Mr. BUYER. Wait a minute. Reclaiming my time, please do not come to the floor and make things up. As a JAG officer in the first Gulf War, I wrote the practice and procedures for article V tribunals. I participated in the tribunals to determine status, a person's status. The President of the United States does not participate in that process.

So, please, don't be silly and just make things up.

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

Mr. Speaker, let me just go to the Detainee Act. It says that review is done by the District of Columbia relating to any aspect of the detention of an alien, and we have expanded it from Guantanamo Bay to anywhere, who has been determined by the United States District Court of Appeals for the District of Columbia Circuit in accordance with the procedures set forth in section 1405. So there is a process whereby the review is made with respect to the status of that alien.

Let me go to a second point. The gentleman spoke about hearsay evidence being allowed. That is true. Hearsay evidence is allowed, with certain restrictions. The judge has to find that it is probative, that it is relevant and that it is reliable.

The war crimes tribunals in Yugoslavia and Rwanda allow hearsay evidence. As I recall, the bill that was offered by Mr. SKELTON, that was voted on in the HASC, in the Armed Services

Committee, also allowed for the use of hearsay evidence.

So hearsay evidence, I would say to my friends, is not excluded and has not historically been excluded in war crimes trials in Rwanda, in Yugoslavia.

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

Mr. Speaker, first I would make reference to my friend from Indiana (Mr. BUYER), and thank him for his comments. I am sorry that we don't agree on the basis of this. But thank you for your comments a few moments ago.

Mr. Speaker, I yield 3 minutes to the gentleman from Ohio (Mr. KUCINICH).

Mr. KUCINICH. Mr. Speaker, I thank the gentleman from Missouri for his defense of basic constitutional principles. I would say that the basic premise of military commissions, that the U.S. military should try unlawful enemy combatants using draconian rules, that basic premise is false.

The jury of commissioned military officers are not peers of these detainees. The detainees are accused of crimes against humanity and should be tried like all other such persons. The U.S. should hand over these detainees to the International Criminal Court. The U.S. should offer evidence that would be legal under our Constitution and the Geneva Conventions. This model of justice would set a precedent for other nations where the rule of law remains unfair, unjust, and inhumane.

The wrong approach is to create a court system that has more in common with the nations that torture, jail and hold indefinitely anyone without legitimate evidence.

The second point: H.R. 6166 and S. 3930 cast a wide net in defining unlawful enemy combatants that would include any American supporter of a national liberation movement which is seeking to overthrow a U.S. Government-supported despot.

For instance, with such a loose definition, the thousands of Americans, many of whom are church clergy, who provided support to the armed and unarmed opposition to the disposed dictatorships of El Salvador and Nicaragua, could have been designated as unlawful enemy combatants.

This hypothetical could occur since, one, it would only take a determination by the President or Secretary of Defense that the opposition to a U.S.-favored dictator was engaged in hostilities against the U.S., and that, two, the act of solidarity by the American clergymen supported the opposition group.

This is very dangerous. It is widely known that the U.S. conducted a dirty war throughout Central and South America to uphold repressive regimes there.

The third point I would like to make is that H.R. 6166 and S. 3930 could make similar solidarity actions in the future a crime. Those crimes should not be triable by military commissions. They would be new crimes and expose Americans to prosecution simply for supporting unfortunate people in other countries who are struggling for their freedom.

The other point is that H.R. 6166 and S. 3930 create a large loophole to keep administration officials out of jail for violations of the War Crimes Act of 1996. Section 4 amends the War Crimes Act to immunize from prosecution civilians who subject people to horrific abuse that may fall short of the definition of torture.

It is clear that senior administrative officials signed off on aggressive and illegal techniques and are potentially liable under the War Crimes Act of 1996. Instead, Congress is going to gut the War Crimes Act to protect those who permitted torture of detainees.

If those who think the so-called war on terror is about ideas such as good versus evil and democracy versus thuggery, then H.R. 6166 sends the wrong message about the true values of Americans. Let's stand up for the principles that this country was founded upon. Let's stand up for the Constitution, for the land of the free, for the home of the brave.

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

Mr. Speaker, let me just make a comment about the fact that we enumerate the crimes that might be committed, what we call the grave offenses under article III.

I think that it accrues to the benefit of our soldiers, sailors, airmen and marines and our intelligence agents that they know what the crimes are when they have people in custody, and the fact that those grave crimes, and they are enumerated, are defined, gives clarity to our folks so they know what the offenses are. I think that serves the purpose. It does not disserve the purpose.

But the idea that we have also reserved to the President on nongrave offenses, and again, one of the examples that was given by expert testimony was if you use the term ''degrading,'' you could charge that a female colonel JAG officer interrogating a Muslim male is in and of itself degrading, because it is a female interrogating a male, and in their culture that would be considered to be degrading.

I think it is important not to expose that female JAG officer to liability. And it is important, therefore, when you have what you might consider to be minor infractions to not label that person, that American, a war criminal, but to allow the President as Commander in Chief to put forth regulations.

So I think this is a good fit, and it gives the thing that is most important to personnel, and that is clarity.

Mr. BUYER. Mr. Speaker, will the gentleman yield?

Mr. HUNTER. I yield to the gentleman from Indiana.

Mr. BUYER. What I would like to share with everyone, having done interrogations, I have interrogated Iraqi high command when I was at the Western Enemy Prisoner of War Camp. I assure you that trying to use any type of method to torture or beat the person you are trying to interrogate, I assure you, you never want to do that as an interrogator, because whatever he is going to say is really not going to be helpful to you. So as an interrogator, it is the last thing. It wouldn't even enter your mind that you want to do this type of thing.

The only time, I won't say the only time, some of the most difficult situations are usually what we find in the field where time is of the essence, where someone has just been killed, you are in a battlefield situation, you have gotten a prisoner and you need to know who they are and where they just went. That is generally where bad things happen. It is not at a garrison, in prison or a detention center.

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

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

Mr. WU. Mr. Speaker, this is a sad day in the long history of this Chamber and of this Congress because today we break faith with the basic tenets of Anglo-American law that have come down from the Magna Carta, through the attempts of Charles I to suspend the writ of habeas corpus, to the challenges that American Presidents have faced in every stressful conflict situation in this Nation's history.

□ 1230

Although we should care about the rights of aliens seized in other countries, we should care, what we are debating today are the rights of American citizens here in the United States.

If my wife, a sixth generation Oregonian, were seized up and detained under the law we are considering today, she would disappear into a black hole of detention with no access to article 3 courts. At best, she would get a military tribunal, and that is not what American citizens deserve. The Koramatsu case from World War II is still the law of the land. It has not been overturned. And what it stands for is the proposition that civilians can be held by the military in this country. The Koramatsu case has been called a gun pointed at the heart of our civil liberties, and today this Congress loads that weapon.

This law is unwise as it is unconstitutional, and we should not be enacting this in haste. The great writ is one of our great protections. It applies to all Americans, and Americans should not be tried by a military tribunal.

Mr. SKELTON. Mr. Speaker, I recognize the ranking member of the Judiciary Committee (Mr. CONYERS) for 1 minute.

Mr. CONYERS. I thank the gentleman for yielding. He has done great legal work from the Armed Services Committee.

I just keep going through my mind, and this is getting to be a night and

day job, because I have a Member I respect so much in judiciary, Mr. LUNGREN, who keeps trying to tell us that there are two writs of habeas corpus. A wonderful idea, if it were only true.

The statutory writ of habeas corpus, I say to my colleague from California, is to implement the great writ in the Constitution. So to be telling us repeatedly, repeatedly, and I have got the cases, I have been waiting for this great moment in American judiciary history, that there are two writs and that you have got to know which one you are talking about is absolutely incorrect.

Mr. SKELTON. Mr. Speaker, I yield 4 minutes to the gentlewoman from Texas, SHEILA JACKSON-LEE.

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Let me thank the distinguished ranking member of the Armed Services for his very insightful, instructive messages on the dilemma we face in Iraq and Afghanistan. Let me also acknowledge that there are individuals who have had firsthand experience in the military courts.

Having gone to a law school that had a very outstanding JAG school, I understand the importance of military law and was one time a member of the U.S. Military Court of Appeals.

But I think it is important that we make this argument understandable, because in a few hours the President will give to my friends on the other side of the aisle an opportunity of bragging rights by having signed a bill that has been rushed through this process and has totally ignored the Supreme Court's decision.

Why are we standing here on this side of the aisle seemingly making arguments that don't promote security and safety in the United States? Well, that interpretation is totally wrong, because not one of us wants to take away the tools that would ensure America's security. But what we are concerned about are the faces here who represent those who have lost their lives on the front lines of Iraq and Afghanistan, and they continue over and over again. We have concerns about the life they sacrifice and the soldiers that they left behind. We know that soldiers don't leave comrades on the battlefield, injured or lost in the line of battle.

Today, this military tribunal commission will leave our soldiers on the battlefield, for what it does is it creates the atmosphere, no matter whether we are in a guerilla war or we are in the confrontational wars that we know of World War I and II. It is to ensure that the treatment of our soldiers, if caught by the enemy, will reflect the lack of treatment that we have given here.

Mr. SKELTON has made it very clear, we could fix this, because he would have provided an expedited Constitution review of the entire matter to give the opportunity for entry into the courts under habeas. It would also require that these military commissions, because they are eliminating rights, we are not saying releasing people, we are saying eliminating rights, that then get translated to the miserable treatment of those who were incarcerated or taken off the battlefield that are our soldiers.

Secondly, it refuses to give reauthorization language to the military commissions. We don't know where we will be in 3 years. We don't know how negatively this will impact our soldiers on the battlefield, which next conflict that, God forbid, we may have to be engaged in.

Also, the language that my friends have go beyond the scope of the Supreme Court's decision in Hamdan to decide whether or not detainees have habeas rights. The court already decided they do. Or whether or not the habeas provisions in the Detainee Treatment Act are constitutionally legal. The habeas provisions in the legislation are contrary to congressional intent in the Detainee Treatment Act. In that act, Congress did not intend to strip the courts of jurisdiction over the pending habeas.

In addition, although my friends say they fixed it, they also deny the rights which I had an amendment to to utilize the Geneva Conventions language to say that you were tortured or not tortured, even if you would put that defense in a classified presentation.

So in concluding, let me say we owe them a debt of gratitude. Let's vote down this tribunal to save future lives.

I rise in strong opposition to S. 3930, the Military Commissions Act. I oppose this bill because I stand strong for our troops. I stand strong for the Constitution. I stand strong for the values that have made our country, the United States of America, the greatest country in the history of the world. I oppose this legislation because it is not becoming a nation that is strong in its values, confident of its future, and proud of its ancient heritage.

Mr. Speaker, let us be crystal clear: All Americans, and Democrats especially, want those responsible for 9/11 and other terrorist acts to be tried fairly and punished accordingly, and we want those convictions to be upheld by our courts.

Democrats want the President to have the best possible intelligence to prevent future terrorist attacks on the United States and its allies.

Democrats agreed with the President when he said "whether the terrorists are brought to justice or justice brought to the terrorists, justice will be done." But Democrats understand that justice requires the Congress to establish a system for trying suspected terrorists that not only is fundamentally fair but also consistent with the Geneva Convention.

We should abide by the Geneva Convention not out of some slavish devotion to international law or desire to coddle terrorists, but because adherence to the Geneva Convention protects American troops and affirms American values.

S. 3930, the compromise before us, includes some improvements that I strongly support. For example, evidence obtained through torture can no longer be used against the accused. Similarly, the compromise bill provides that hearsay evidence can be challenged as unreliable.

Perhaps the most important improvement over the bill passed by the House is that accused terrorists will have the right to rebut all evidence offered by the prosecution. As is the case in the existing military justice system, classified evidence can be summarized, redacted, declassified, or otherwise made available to the accused without compromising sources or methods. This change to the bill goes a long way toward minimizing the chance that an accused may be convicted with secret evidence, a shameful practice favored by dictators and totalitarians but beneath the dignity of a great nation like the United States. As Senator JOHN MCCAIN said:

I think it's important that we stand by 200 years of legal precedents concerning classified information because the defendant should have a right to know what evidence is being used.

However, I am concerned that there is reason to believe that even with this compromise legislation, this system of military commissions may lead to endless litigation and get struck down by the courts. Then we would find ourselves back here again next year, or five years from now, trying to develop a system that can finally bring the likes of Khalid Sheik Mohammed to justice. Why would we want to give terrorist detainees a "get out of jail free" card when we can avoid that by establishing military commissions that work. As currently written, the compromise bill has provisions that could lead to the reversal of a conviction.

Specifically, the bill contains a section that strips the federal courts of jurisdiction over habeas corpus petitions filed prior to the passage of the Detainee Treatment Act last December on behalf of detainees at Guantanamo Bay. Mr. Speaker, nine former federal judges were so alarmed by this prospect that they were compelled go public with their concerns:

Congress would thus be skating on this constitutional ice in depriving the federal courts of their power to hear the cases of Guantanamo detainees. . . . If one goal of the provision is to bring these cases to a speedy conclusion, we can assure from our considerable experience that eliminating habeas would be unconstitutional.

Mr. Speaker, common Article 3 of the Geneva Convention requires that a military commission be a regularly constituted court affording all the necessary "judicial guarantees which are recognized as indispensable by civilized peoples. Notwithstanding the provision in the House bill that the military commissions established therein satisfy this standard, the fact is that other nations will agree. Simply saying so does not make it so. Moreover, they may well be right. Consider this, Mr. Speaker:

The compromise allows statements to be entered into evidence that were obtained through cruel, inhuman and degrading treatment and lesser forms of coercion if the statement was obtained before passage of the Detainee Treatment Act last December.

To provide limited immunity to government agents involved in the CIA detention and interrogation program, the bill amends the War Crimes Act of 1996 to encompass only ''grave breaches'' of the Geneva Conventions. U.S. agents could not be tried under the War Crimes Act of 1996 to encompass only ''grave breaches'' of the Geneva Convention. U.S. agents could not be tried under the

War Crimes Act for past actions that degraded and humiliated detainees. The bill also limits any use of international law such as the Geneva Convention in interpreting the War Crimes Act.

Mr. Speaker, what is sometimes lost sight of in all the tumult and commotion is that the reason we have observed the Geneva Conventions " since their adoption in 1949 is to protect members of our military. But as the Judge Advocate Generals pointed out, the compromise bill could place United States servicemembers at risk by establishing an entirely new international standard that American troops could be subjected to if captured overseas. As Rear Admiral Bruce McDonald testified:

I go back to the reciprocity issue that we raised earlier, that I would be very concerned about other nations looking in on the United States and making a determination that, if it's good enough for the United States, it's good enough for us, and perhaps doing a lot of damage and harm internationally if one of our servicemen or -women were taken and held as a detainee.

What's more, Mr. Speaker, the Geneva Conventions also protect those not in uniform—special forces personnel, diplomatic personnel, CIA agents, contractors, journalists, missionaries, relief workers and all other civilians. Changing our commitment to this treaty could endanger them, as well.

We can fix these deficiencies easily if we only we have the will. What we should do is recommit the bill with instructions to add two important elements: (1) expedited constitutional review of the legislation; and (2) a requirement that these military commissions be reauthorized after three years.

Under expedited review, the constitutionality of the military commission system could be tested and determined quickly and early—before there are trials and convictions. And it would help provide stability and sure-footing for novel legislation that sets up a military commissions system unlike anything in American history.

Such an approach provides no additional rights to alleged terrorists. All it does is give the Supreme Court of the United States the ability to decide whether the military commissions system under this act is legal or not. It simply guarantees rapid judicial review.

REQUIRING REAUTHORIZATION IN THREE YEARS

Second, any system of military commissions to deal with detainees should be required to be reauthorized in three years. There are several good for requiring Congress to reaffirm its judgment that such tribunals are necessary:

The Military Commissions Act of 2006 is a far-reaching measure that implements an entirely new kind of military justice system outside the Uniform Code of Military Justice. It has many complex provisions.

This legislation has been rushed to the floor. It has numerous provisions that are still poorly understood by many in Congress. By requiring a reauthorization in three years, we give Congress the ability to carefully review how this statute is working in the real world.

Providing for a reauthorization in three years is the best way to ensure congressional oversight. This reauthorization requirement will allow Congress to evaluate the effectiveness of the military commission provisions and decide whether they need any modifications in the future.

The reauthorization requirement in the PATRIOT Act has worked well—compelling Congress to review how various provisions in the PATRIOT Act have worked. As a result of congressional review, important modifications in the PATRIOT Act were signed into law in January 2006 when 16 provisions were reauthorized.

Mr. Speaker, even Republicans on the House Judiciary Committee admitted that the only way Congress was able to get information out of the Justice Department about the operation of the PATRIOT Act was that Congress had to reauthorize it—similarly, the only way Congress will be able to perform proper oversight on military commissions is this similar requirement that the program must be reauthorized. The reauthorization requirement is a critical tool in Congress' ability to hold the Administration accountable and review the military commission program's performance.

Mr. Speaker, I cannot recall being asked to render final judgment on a matter of such scope, consequence, and moment in so short a period of time with such a sparsely developed legislative record. Now is not the time to rush blindly forward. Rather, now more than ever, it is important to take our time and make the right decision and establish the right policy. And the right policy is not to jettison the Geneva Convention.

We should not try to redefine the Geneva Convention. We should not do anything to alter our international obligations in an election-year rush. We cannot use international law only when it is convenient and expedient. Our commitment to the Geneva Conventions gives us the moral high ground. This is true in both a long war against radical terrorists and a war for the hearts and minds of people from every religion and every nation. If we compromise our values, the terrorists win. As Senator MCCAIN has said: "This is not about the terrorists are, this is about who we are."

The United States was one of the prime architects of the Geneva Conventions and other international laws. Our goal was to protect prisoners of war in all kinds of armed conflicts and insure that no one would be outside the law of war. Coming shortly after World War II, they knew the horrors of war but they still chose to limit the inhumanity of war by establishing minimum protections of due process and humane treatment, even for those accused of grave breaches of the Conventions.

Mr. Speaker, our nation has the finest military in the world. Our nation also deserves to have the finest military justice system in the world. I oppose S. 3930 because it departs significantly from the tried and true procedures established in the UCMJ.

The United States has long served as the model for the world of a civilized society that effectively blends security and human liberty. When we refuse to observe the very international standards for the treatment of detainees, which we were so instrumental in developing, we provide encouragement for others around the world to do the same. Our British allies have demonstrated that these traditional principles can be adhered to without distinguishing the ability to provide for the security of its citizens. We must do likewise.

Mr. Speaker, the treatment and trials of detainees by the United States is too important not to do it right. In the words of Jonathan Winthrop, often quoted by President Reagan, "for we must consider that we shall be as a City upon a hill. The eyes of all people are upon us." Let us act worthy of ourselves and our nation.

So Mr. Speaker, I stand in opposition to this legislation. But I do not stand alone. I stand with former Secretary of State Colin Powell. I stand with former Chairman of the Joint Chiefs John Vesey. I stand with the 911 Families Opposed to Administration Efforts to Undermine Geneva Conventions. I stand with the retired federal judges and admirals and Judge Advocate Generals.

The bill before us is not the right way to do justice by the American people. I therefore cannot support it and I urge my colleagues to reject it. We have time to come up with a better product and we should. The American people deserve no less. The eyes of the world are upon us. Let us act worthy of ourselves.

Mr. SKELTON. I yield 1½ minutes to the gentleman from New York (Mr. NADLER).

Mr. NADLER. Mr. Speaker, this bill says the term ''unlawful enemy combatant,'' means, one, a person who is engaged in hostilities or who is purposefully and materially supportive of hostilities against the United States; or, two, a person who has been determined to be an unlawful enemy combat status, review tribunal, or another competent tribunal established under the authority of the President.

In other words, you could become an unlawful enemy combatant because you are adjudged by a tribunal; or, one, because the President says so without a tribunal. Otherwise, this language has no meaning. That's page 3 of the bill.

And if you look at page 93 of the bill, you find that no court shall have jurisdiction to hear an application for writ of habeas corpus or for an application relating to any aspect of the detention transfer, treatment, trial, or conditions of confinement of an alien who is an unlawful enemy combatant.

In other words, anyone other than the citizen can be accused by the President or by any bureaucrat of being an unlawful enemy combatant, thrown into jail, and get no benefits.

We have heard repeatedly that we are giving rights to terrorism. No, we are not. We are not trying to give rights to terrorists. We are saying that before someone is accused of rape or murder, you don't string them up; you first give them a trial and then string them up.

And what they are saying, what this bill says is the President or his designee can designate someone as an unlawful enemy combatant, and, with no trial, no hearing, no status review, no nothing, throw them in jail forever. That is un-American. It is worse than what we rebelled against the King of England for in 1776, and we should be ashamed of ourselves.

Mr. HUNTER. I yield myself such time as I may consume, Mr. Speaker. And let me make five points here.

First, there is nothing in this language that directs people to pick up or not pick up people. This is the language. This bill designs and constructs military commissions. On page 8 of the bill it gives the jurisdiction of the commission, and it says: ''A military commission under this chapter shall have

jurisdiction to try any offense made punishable by this chapter or the law of war when committed by an alien unlawful enemy combatant before, on, or after September 11, 2001.'' That would allow us also to try those folks from the Cole and the Embassy bombings.

With respect to habeas, there is no soldier in the world, no POW in the world from our research who has a habeas right.

And let me go to Mr. WU's point. Mr. WU said, when we pointed out the Detainee Treatment Act provided for review, he said that he thought it expired because it was attached to an appropriations bill and expired annually. That is not so. It is a permanent code. So the Detainee Treatment Act is in place. And if the gentleman can show me where it is expired, we will be happy to entertain that.

Secondly, the gentleman also said that it was procedural only. I am referring to the Detainee Treatment Act that says that the court has the jurisdiction to review relating to any aspect, and I am quoting, any aspect of the detention of the person in question, relating to any aspect. And, of course, that would go as to whether he was a combatant. So it was not as you stated, it is not simply a procedural review.

So I just want to go over those points.

I reserve the balance of my time.

Mr. SKELTON. I yield 2 minutes to the gentlewoman from California (Mrs. DAVIS), who is a member of the Armed Services Committee.

Mrs. DAVIS of California. Mr. Speaker, I want to give this administration, any administration, the ability to prosecute, convict, and punish individuals who have committed terrorist acts and who are planning acts against the United States. But we must do this under the guidelines outlined by the Supreme Court in Hamdan v. Rumsfeld.

The Court entrusted this Congress with the duty to reform military tribunals in a matter consistent with the Constitution and international treaty obligations.

While the Senate attempted to respect our obligations under Geneva, concern remains. We have heard that on many occasions that this bill will grant the Executive the power to define certain types of interrogation methods that may be inconsistent with common article 3 of the Geneva Conventions.

Now, Mr. Speaker, in response to Hamdan, the House Armed Services Committee heard from current and former judge advocate generals. Mr. Speaker, I listened to them. Their testimony was compelling. Many spoke out against modifying the Geneva Conventions in any way, in anyway, because of the risk that this provision could put our troops in harm's way and could be found to be inconsistent with Hamdan. Congress must ensure that this doesn't happen.

In this bill, I believe, Mr. Speaker, that we miss an opportunity to be absolutely clear on these points and to show the world that America can be tough on terrorism while staying true to the values we hold so dear.

Ms. JACKSON-LEE of Texas. If the gentlewoman would yield just for a moment. I thank you for your comments. I think it should be clear that the framework for soldiers may not be habeas in civilian language, but there is a procedure that soldiers would have to be able to petition their detention, and it is a military term. And what we are seeing in the military tribunals commission language is that doesn't exist.

□ 1245

Mr. SKELTON. Mr. Speaker, in closing, let me say that being tough on terrorists not only centers about a conviction, a judgment rendered on what they did, whether it be the death penalty, life imprisonment or a term of years but also centers upon the fact that there is certainty after a conviction; and the last thing I want to see coming out of this is for there to be a reversal on appeal which destroys certainty because of what we did in this law.

Mr. Speaker, I yield back the balance of my time.

Mr. HUNTER. Mr. Speaker, I yield the balance of my time to the distinguished chairman of our Veterans Committee and former JAG officer, Mr. BUYER, for our closing remarks.

Mr. BUYER. Mr. Speaker, to bring a chill into the debate, the issue of who can be detained is not addressed in this bill. This bill is about trying alien detainees who are unlawful enemy combatants. Nothing in this bill changes the Detainee Treatment Act of 2005.

The SPEAKER pro tempore (Mr. PRICE of Georgia). All time has expired.

The Chair recognizes the gentleman from Wisconsin.

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

Mr. Speaker, I rise in support of S. 3930, the Military Commissions Act of 2006, which is identical to legislation this House passed in a bipartisan manner on Wednesday evening by a vote 253–168. The other body voted 65–34 to approve this bill last night.

Let me say that the only reason we are here today is because the other body has committed a flagrant act of legislative plagiarism, once again. The House passed its version of the bill first. They would not take up a bill with an ''H.R.'' number but instead picked up the work product that this House did, put an ''S.'' number on it, and thus required us to have an hour debate on this issue for a second time.

I regret that, and I think all of the arguments that were made on Wednesday when we fully and thoroughly debated this bill are just as valid today as they were 2 days ago. Because there is not one word changed in the legislation between the time it passed the House and the time the Senate reintroduced it with an ''S.'' number and put us through an hour debate on the rule and an hour debate on the same bill, in my opinion unnecessarily.

Having said that, on the merits of the bill, the way we treat terrorist enemy combatants sends a strong signal to the rest of the world about our commitment to the rule of law. This legislation says we will not subject enemy combatants in our custody to the cruel and brutal treatment they regularly utilize against our soldiers and civilians.

At the same time, this bill makes it clear to the terrorists and their lawyers in America that America will not allow them to subvert our judicial process nor to disrupt the war on terror with unnecessary or frivolous lawsuits. The bill strikes the right balance. It establishes a mechanism that is full and fair but also is orderly and efficient.

Indeed, the bill provides some 26 new rights to terrorist detainees, far more rights than any other system employed in history to try suspected war criminals. Those who have suggested that this legislation will be found unconstitutional are misguided.

In this legislation, we accomplish precisely what a majority of the Supreme Court, and particularly Justice Breyer, invited us to do in the Hamdan case: construct a full set of rules for conducting military commissions that meet the fundamental test of fairness under our Constitution.

On habeas corpus, let me again restate Congress' understanding of the law, because it is against this backdrop that we pass this legislation today.

The Supreme Court has never held that the Constitution's protections, including habeas corpus, extend to noncitizens held outside the United States. To repeat, the Supreme Court has never held that the habeas corpus protections contained in the Constitution apply to noncitizens held outside the United States.

In fact, the Supreme Court rejected such an argument in the 1950 case of Johnson v. Eisentrager. That portion of Eisentrager is still good law. Moreover, in the 1990 Verdugo case, the court reiterated that aliens detained in the United States but with no substantial connection to our country cannot avail themselves of the Constitution's protections.

If the Supreme Court follows its own precedents and takes seriously its invitation to Congress to legislate in this area, the Court should have no problem concluding that this bill passes constitutional muster.

As we consider this legislation, it is important to remember, first and foremost, that this bill is about prosecuting the most dangerous terrorist that America has ever confronted, individuals like Khalid Sheikh Mohammed, the mastermind of the 9/11 attacks, or Ahbd Nashiri, who planned the attack on the USS *Cole*. None of their victims was treated with the same kind of respect for human life and the rule of law that is embodied in this legislation.

I urge my colleagues to support this legislation, and let me reiterate for my colleagues the 26 rights for terrorist detainees that are created by this legislation. They include:

The right to be informed of the charges against them as soon as practicable;

The right to service of charges sufficiently in advance of trial to prepare a defense;

The right to reasonable continuances;

The right to preemptory challenge against members of the commission and challenges for cause against members of the commission and the military judge;

Witness must testify under oath, and judges, counsels and members of the military commission must take an oath.

There is a right to enter a plea of not guilty.

There is a right to obtain witnesses in other evidence.

There is a right to exculpatory evidence as soon as possible.

There is a right to be present in court with the exception of certain classified evidence involving national security, preservation of safety or preventing disruption of proceedings;

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

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

The right against compulsory self-incrimination;

The right against double jeopardy;

The defense of lack of mental responsibility;

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

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

Two-thirds vote of members required for conviction and three-quarters vote required for sentence of life or over 10 years, and unanimous verdict required for the death penalty;

Verbatim authenticated record of trial;

Cruel or unusual punishments are prohibited;

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

The right to review the full factual record by the convening authority; and

The right to at least two appeals, including to a Federal Article III appellate court.

I submit, Mr. Speaker, that none of the people who have been beheaded by terrorists had any of those rights.

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

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

Mr. Speaker, I would like to begin by inserting the New York Times editorial of September 28 entitled ''Rushing Off a Cliff.''

[From the New York Times, Sept. 28, 2006]

RUSHING OFF A CLIFF

Here's what happens when this irresponsible Congress railroads a profoundly important bill to serve the mindless politics of a midterm election: The Bush administration uses Republicans' fear of losing their majority to push through ghastly ideas about antiterrorism that will make American troops less safe and do lasting damage to our 217-year-old nation of laws—while actually doing nothing to protect the nation from terrorists. Democrats betray their principles to avoid last-minute attack ads. Our democracy is the big loser.

Republicans say Congress must act right now to create procedures for charging and trying terrorists—because the men accused of plotting the 9/11 attacks are available for trial. That's pure propaganda. Those men could have been tried and convicted long ago, but President Bush chose not to. He held them in illegal detention, had them questioned in ways that will make real trials very hard, and invented a transparently illegal system of kangaroo courts to convict them.

It was only after the Supreme Court issued the inevitable ruling striking down Mr. Bush's shadow penal system that he adopted his tone of urgency. It serves a cynical goal: Republican strategists think they can win this fall, not by passing a good law but by forcing Democrats to vote against a bad one so they could be made to look soft on terrorism.

Last week, the White House and three Republican senators announced a terrible deal on this legislation that gave Mr. Bush most of what he wanted, including a blanket waiver for crimes Americans may have committed in the service of his antiterrorism policies. Then Vice President Dick Cheney and his willing lawmakers rewrote the rest of the measure so that it would give Mr. Bush the power to jail pretty much anyone he wants for as long as he wants without charging them, to unilaterally reinterpret the Geneva Conventions, to authorize what normal people consider torture, and to deny justice to hundreds of men captured in error.

These are some of the bill's biggest flaws:

Enemy Combatants: A dangerously broad definition of ''illegal enemy combatant'' in the bill could subject legal residents of the United States, as well as foreign citizens living in their own countries, to summary arrest and indefinite detention with no hope of appeal. The president could give the power to apply this label to anyone he wanted.

The Geneva Conventions: The bill would repudiate a half-century of international precedent by allowing Mr. Bush to decide on his own what abusive interrogation methods he considered permissible. And his decision could stay secret—there's no requirement that this list be published.

Habeas Corpus: Detainees in U.S. military prisons would lose the basic right to challenge their imprisonment. These cases do not clog the courts, nor coddle terrorists. They simply give wrongly imprisoned people a chance to prove their innocence.

Judicial Review: The courts would have no power to review any aspect of this new system, except verdicts by military tribunals. The bill would limit appeals and bar legal actions based on the Geneva Conventions, directly or indirectly. All Mr. Bush would have to do to lock anyone up forever is to declare him an illegal combatant and not have a trial.

Coerced Evidence: Coerced evidence would be permissible if a judge considered it reliable—already a contradiction in terms—and relevant. Coercion is defined in a way that exempts anything done before the passage of the 2005 Detainee Treatment Act, and anything else Mr. Bush chooses.

Secret Evidence: American standards of justice prohibit evidence and testimony that is kept secret from the defendant, whether the accused is a corporate executive or a mass murderer. But the bill as redrafted by Mr. Cheney seems to weaken protections against such evidence.

Offenses: The definition of torture is unacceptably narrow, a virtual reprise of the deeply cynical memos the administration produced after 9/11. Rape and sexual assault are defined in a retrograde way that covers only forced or coerced activity, and not other forms of nonconsensual sex. The bill would effectively eliminate the idea of rape as torture.

There is not enough time to fix these bills, especially since the few Republicans who call themselves moderates have been whipped into line, and the Democratic leadership in the Senate seems to have misplaced its spine. If there was ever a moment for a filibuster, this was it.

We don't blame the Democrats for being frightened. The Republicans have made it clear that they'll use any opportunity to brand anyone who votes against this bill as a terrorist enabler. But Americans of the future won't remember the pragmatic arguments for caving in to the administration.

They'll know that in 2006, Congress passed a tyrannical law that will be ranked with the low points in American democracy, our generation's version of the Alien and Sedition Acts.

Mr. Speaker, the New York Times editorial summarizes the simple fact that what we are doing is giving the President the power to jail, and I am quoting from the editorial, pretty much anyone he wants for as long as he wants without charging them, to unilaterally reinterpret the Geneva Conventions, to authorize what normal people consider torture, and to deny justice to hundreds of men captured in error.

I want to repeat that, because I could have taken a lot of time to say the same thing.

The President in this measure would be given the power to jail pretty much anyone he wants for as long as he wants without charging them, to unilaterally reinterpret the Geneva Conventions, to authorize what normal people consider torture, and to deny justice to hundreds of men captured in error.

Is there anybody that would really want to implement a piece of legislation on this last day before recess that would do that?

Well, maybe there is innocent error. I have talked about the very esteemed Attorney General from California who has up until today been arguing that there are two writs of habeas corpus.

But then I come to the gentleman from Indiana who says that there is nothing in this bill that relates to who can be detained. He says absolutely nothing.

The first page of the bill starts off with ''unlawful enemy combatant.'' The term ''unlawful enemy combatant'' means a person who has engaged in hostilities or who has purposefully or materially supported hostilities against the United States, and they go

on to tell you that he can be subjected to a combatant status review tribunal or any other tribunal established under the authority of the President or the Secretary of Defense. That's the first page.

Then I get to my esteemed chairman of the committee that the United States has never held that people can be detained outside of the U.S. and have habeas rights. Well, as my colleague, the gentleman from New York (Mr. NADLER), points out, we are talking about being picked up and held indefinitely from Chicago. You don't have to be outside of the U.S. That's the problem. This is the most drastic piece of legislation that has ever come before the House of Representatives dealing with the writ of habeas corpus.

Mr. Speaker, I yield 2 minutes to the gentleman from New York (Mr. NADLER).

Mr. NADLER. Mr. Speaker, the radical nature of this bill is that, as the gentleman from Michigan said, anybody picked up in Chicago can be subject to this bill. The President can determine unilaterally, look at paragraph 1 on page 3, that someone is an unlawful enemy combatant, or they can put the person before a tribunal, paragraph 2 on page 3, to decide if he is an enemy combatant. But you don't have to have a tribunal.

A little later it says that military tribunals are not subject to the speedy trial rule. So someone can be determined by the executive branch to be an unlawful enemy combatant, someone in America, never have a trial, never go before a combat status review tribunal, never go before a military commission, have none of the rights everybody is talking about, and be held in jail forever. That is wrong.

Secondly, the gentleman who was debating me before said soldiers have never had rights to habeas corpus. Certainly, if you pick up someone on the battlefield with a rifle in his arms, he shouldn't have habeas corpus. But if you pick up somebody in Chicago or New York or Los Angeles, who is to say that person is an unlawful enemy combatant? If you pick up somebody in Chicago or New York and say he is a murderer or a rapist and you want to hold him in jail until you can have a trial, you go before a judge and say, here is our evidence. There is some evidence that he is, in fact, a murderer or rapist to justify keeping him in jail.

□ 1300

Under this, though, you say he is an unlawful enemy combatant and that's that. You never hear from him again. That is against all our traditions. It makes the President a dictator because someone who claims the power to put someone in jail forever, with no hearing, no evidence, and no recourse, is a dictator. And on page 93 of the bill it says that no court shall have jurisdiction to entertain habeas corpus, which is simply a request to say show me why you are holding me in jail, or to entertain any action saying, Hey, you are torturing me, about the condition of confinement. So you can take this person because the President says so, put him in jail, subject him to any torture or whatever, and whatever you write in the law doesn't matter because no court can hear the case. There is no one to bring the complaint before it. That is wrong and it is insupportable.

Mr. SENSENBRENNER. Mr. Speaker, the gentleman from California, Mr. LUNGREN, was so moved by the last speech that I yield him 2 minutes.

Mr. DANIEL E. LUNGREN of California. Mr. Speaker, I thank the gentleman for the time.

Mr. Speaker, let me make clear, first of all, the distinguished ranking member of the full committee referred to the first page of the bill, but he needs to go on further, to section 948b subsection (a), which defines the purpose of the military tribunals, where it says: ''This chapter establishes procedures governing the use of military commissions to try alien unlawful enemy combatants.'' So where initially he referred to the definition of unlawful enemy combatants, this bill refers to ''alien'' unlawful enemy combatants engaged in hostilities against the U.S. So you can't pick up just anybody in the United States.

Section 948a(3) defines an alien as a person who is not a citizen of the United States. Therefore, the language of the bill before us precludes the use of military commissions to try citizens of the U.S.

Second, the limitations on habeas corpus also only apply to alien enemy combatants. By its very terms, section 7 says that ''no court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the United States who has been determined by the United States to have been properly detained . . . '' Therefore, under the expressed terms of the bill, an American citizen will have the unencumbered ability to challenge his or her detention as they have under the Constitution.

So let's not confuse it. Let's read all sections of the bill. We are dealing with, as the bill says, ''alien unlawful enemy combatants,'' those people who are not in uniform, those people who are not following the rules of international law with respect to war, those people who hide behind women and children, those people who use the very fact that they are not identified as ''legal combatants'' to try to kill and maim Americans around the world.

That is what this tribunal is set up for, and to give them more rights than they would have virtually anywhere else and in any other system, as articulated by the chairman of the full committee. So let's not confuse the facts.

Mr. CONYERS. Mr. Speaker, I yield 1 minute to the distinguished gentlewoman from Texas (Ms. JACKSON-LEE), a superlative member of the committee.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I thank the distinguished gentleman. He has waged a powerful argument.

My good friend from California is arguing, if we had taken the time to clarify this bill. Let me tell you what is really in the bill.

First of all, as I continue to acknowledge the existence of the lost lives of our soldiers, the bill does not clarify this whole definition. We have 11,000 non-U.S. citizens serving in the United States Army. We have individuals who are U.S. legal aliens, United States citizens. There is no clarification that they could not be defined as an unlawful enemy combatant. The definition of ''alien'' is unclear. In some places it is defined; in some places it is not.

In addition, the Geneva Conventions is not respected. We have taken this away from the McCain-Warner compromise, and we have destroyed it because what we have done is given the President, not this President, any President, the ability to adjudge what the Geneva Conventions, how to interpret it, how to utilize it.

This is a wrong way to ago. This should have more time. This is not a political opportunity. This is not a campaign speech. These are the lives of our soldiers.

Mr. Speaker, at this time I will insert into the RECORD a letter from admirals and, as well, the 9/11 families opposing the military tribunal commission.

SEPTEMBER 12, 2006.

Senator JOHN WARNER,
Chairman, U.S. Senate Committee on Armed Services, Russell Office Building, U.S. Senate, Washington, DC.

Senator CARL LEVIN,
Ranking Member, U.S. Senate Committee on Armed Services, Russell Office Building, U.S. Senate, Washington, DC.

We find it necessary yet again to communicate with you about issues arising out of our policies concerning detainees held at Guantanamo Bay. It would appear that each time the U.S. Supreme Court speaks, efforts are taken to reverse by legislation the decision of the Court. We refer, of course, to the Supreme Court's Rasul and Hamdan decisions and to the provision in the Administration's proposed Military Comissions Act of 2006 that would strip the federal courts of jurisdiction over even the pending habeas cases that have been brought by the detainees at Guantanamo to challenge the basis for their detention. We urge you to reject any such habeas-stripping provision.

As we have argued and agreed since 9/11, it is necessary for Congress to enact legislation to create military commissions that recognize both the basic notions of due process and the need for specialized rules and procedures to deal with the new paradigm we call the war on terror. This effort must cover those already charged with violating the laws of war and those newly transferred to Guantanamo Bay.

But the military commissions we are now fashioning will have no application to the vast majority of the detainees who have never been charged, and most likely never will be charged. These detainees will not go before any commissions, but will continue to be held as ''enemy combatants.'' It is critical to these detainees, who have not been charged with any crime, that Congress not

strip the courts of jurisdiction to hear their pending habeas cases. The habeas cases are the only avenue open for them to challenge the bases for their detention—potentially life imprisonment—as ''enemy combatants.''

We strongly agree with those who have argued that we must arrive at a position worthy of American values, i.e., that we will not allow military commissions to rely on secret evidence, hearsay, and evidence obtained by torture. But it would be utterly inconsistent, and unworthy of American values, to include language in the draft bill that would, at the same time, strip the courts of habeas jurisdiction and allow detainees to be held, potentially for life, based on CSRT determinations that relied on just such evidence. The effect would be to give greater protections to the likes of Khalid Sheikh Mohammed than to the vast majority of the Guantanamo detainees, who claim that they had nothing to do with al Qaeda or the Taliban.

We are on a course that should have been plotted and navigated years ago, and we might be close to consensus. We ask that, in the closing moments of your consideration of this vital bill, you restore the faith of those who long have been a voice for simple commitment to our longstanding basic principles, to our integrity as a nation, and to the rule of law. We urge you to oppose any further erosion of the proper authority of our courts and to reject any provision that would strip the courts of habeas jurisdiction.

As Alexander Hamilton and James Madison emphasized in the Federalist Papers, the writ of habeas corpus embodies principles fundamental to our nation. It is the essence of the rule of law, ensuring that neither king nor executive may deprive a person of liberty without some independent review to ensure that the detention has a reasonable basis in law and fact. That right must be preserved. Fair hearings do not jeopardize our security. They are what our country stands for.

Sincerely,

JOHN D. HUTSON,
Rear Admiral, JAGC, USN (Ret.).
DONALD J. GUTER,
Rear Admiral JAGC, USN (Ret.).
DAVID M. BRAHMS,
Brigadier General, USMC (Ret.).

9/11 FAMILIES OPPOSE ADMINISTRATION EFFORTS TO UNDERMINE GENEVA CONVENTIONS

WASHINGTON, D.C.—Today 9/11 family members sent a letter to the Senate strongly opposing the Bush Administration's proposals to undermine the Geneva Conventions, decriminalize brutal interrogations and create military commissions lacking fundamental due process guarantees.

The letter challenges the Administration's claim that the Military Commissions Act of 2006 is needed to make America safer. ''There are those who would like to portray the legislation as a choice between supporting the rights of terrorists and keeping the United States safe. We reject this argument. We believe that adopting policies against terrorism which honor our values and our international commitments makes us safer and is the smarter strategy.''

The letter urges members of Congress to reject any legislation which is at all ambiguous on the criminality of brutal interrogation techniques and to oppose supporting military trials that lack due process and judicial accountability.

The letter was signed by the parents of a FDNY fireman killed in the World Trade Center collapse, the mother of a NYPD policeman, along with relatives of victims from all four of the attacks, including a passenger on Flight 93 that crashed in Pennsylvania.

The letter closes by urging members of Congress to ''reject the Administration's ill-conceived proposals which will make us both less safe and less proud as a nation.''

SEPTEMBER 14, 2006.

DEAR SENATOR: As members of families who lost loved ones in the 9/11 attacks, we are writing to express our deep concern over the provisions of the Administration's proposed Military Commissions Act of 2006.

There are those who would like to portray the legislation as a choice between supporting the rights of terrorists and keeping the United States safe. We reject this argument. We believe that adopting policies against terrorism which honor our values and our international commitments makes us safer and is the smarter strategy.

We do not believe that the United States should decriminalize cruel and inhuman interrogations. The Geneva Convention rules against brutal interrogations have long had the strong support of the U.S. because they protect our citizens. We should not be sending a message to the world that we now believe that torture and cruel treatment is sometimes acceptable. Moreover, the Administration's own representatives at the Pentagon have strongly affirmed in just the last few days that torture and abuse do not produce reliable information. No legislation should have your support if it is at all ambiguous on this issue.

Nor do we believe that it is in the interest of the United States to create a system of military courts that violate basic notions of due process and lack truly independent judicial oversight. Not only does this violate our most cherished values and send the wrong message to the world, it also runs the risk that the system will again be struck down resulting in even more delay.

We believe that we must have policies that reflect what is best in the United States rather than compromising our values out of fear. As John McCain has said, ''This is not about who the terrorists are, this is about who we are.'' We urge you to reject the Administration's ill-conceived proposals which will make us both less safe and less proud as a nation.

Sincerely,

Marilynn Rosenthal, Nicholas H. Ruth, Adele Welty, Nissa Youngren, Terry Greene, John LeBlanc, Andrea LeBlanc, Ryan Amundson, Barry Amundson, Colleen Kelly, Terry Kay Rockefeller, John William Harris.

David Potorti, Donna Marsh O' Connor, Kjell Youngren, Blake Allison, Tia Kminek, Jennifer Glick, Lorie Van Auken, Mindy Kleinberg, Anthony Aversano, Paula Shapiro, Valerie Lucznikowska, Lloyd Glick.

James and Patricia Perry, Anne M. Mulderry, Marion Kminek, Alissa Rosenberg-Torres, Kelly Campbell, Bruce Wallace, John M. Leinung, Kristen Breitweiser, Patricia Casazza, Michael A. Casazza, Loretta J. Filipov, Joan Glick.

Mr. CONYERS. Mr. Speaker, I yield 2 minutes to the gentleman from Maryland (Mr. HOYER), our distinguished whip.

Mr. HOYER. Mr. Speaker, I thank the gentleman from Michigan for yielding.

I rise to talk about briefly coddling terrorists.

There is no one in this body, no one in this country who wants to coddle terrorists. But let me remind my friends that Saddam Hussein was taken out of a hole and captured. And we did not torture him, and we have accorded him legal rights to hear the evidence, to address the court, and be represented by counsel. Why did we do that? Because we wanted to coddle Saddam Hussein? Did this administration want to coddle Saddam Hussein? Absolutely not. But because our values and the values of the international community suggested that.

And the ''Butcher of Belgrade,'' Milosevic, who murdered tens of thousands of people and ethnically cleansed 2 million people, we accorded him legal rights because we wanted to coddle him? No. Because that was our value system.

And, yes, even the butchers of Berlin, those who murdered millions of people in the Second World War, at Nuremburg were given their rights to see the evidence, to confront their accusers, and to have the proof adduced at trial. Why did we do that? Because we wanted to coddle the butchers of Berlin? Absolutely not. It was because those are our values, the values of the international community, and the values of our Founding Fathers.

Let us not rush to judgment in this instance. Let us recognize and honor our values. That does not mean that we coddle the murderer, the rapist, or the terrorist. It means that we want a civilized society in which to live in this country and, yes, around the world.

Mr. CONYERS. Mr. Speaker, I yield 15 seconds to my colleague from Oregon (Mr. WU).

Mr. WU. Mr. Speaker, we do a grave injustice today because this statute applies to American citizens as well as everybody else.

Fred Korematsu was a U.S. citizen. He was picked up on a U.S. street. And we issued an apology years later.

If we pass this bill today, some future Congress, long after we are out of office, long after we are dead, some future Congress will be issuing an apology.

Mr. CONYERS. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, this has been an exceedingly interesting discussion here today. I only close by reminding the distinguished member of the Judiciary Committee from California that in the opening parts of this law, this bill, there is no word ''alien'' anywhere in it. It is referring to an unlawful enemy combatant. An unlawful enemy combatant could be an American.

And so I oppose this legislation, finally, because it endangers our troops because we are lowering the standards set forth in the Geneva Conventions by allowing the President to unilaterally interpret the conventions and that can be operative against our own troops. Don't endanger our own troops.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, there is one issue that really has not come up in this debate, and that is the immunity that is given in this bill to the people who are interrogating the enemy combatants.

We need to pass this bill so that interrogations can start up again because without the immunity, anybody who is hired by the United States Government to try to find out whom they are planning on blowing up next would be subject to a lawsuit that would be filed by some attorney that would claim that he was representing the public interest.

This is a protection bill for the interrogators. It is something that is needed, and that is another reason why it ought to pass.

Mr. MCGOVERN. Mr. Speaker, I will not take up any more time speaking about why I oppose this bill. I spoke at length during the House debate, and nothing has changed over the past 48 hours to make me believe that undermining our history, values and constitutional commitment to human rights, civil rights, the rule of law, due process and judicial review is the right thing to do.

Instead, I would like to submit for the RECORD the views of others in the face of this monumental mistake this Congress is making in submitting to the demands of an imperial White House.

I ask unanimous consent to submit into the RECORD the following materials:

1. Resolution Condemning Torture by the Conference of Major Superiors of Men;

2. A September 22, 2006 letter from human rights organizations to the U.S. Senate regarding the Military Commissions Act of 2006;

3. September 28, 2006 New York Times editorial, ''Rushing Off a Cliff;'' and

4. ''Questions for the Interrogators,'' Commentary by Fareed Zakaria, September 25, 2006, Newsweek

RESOLUTION CONDEMNING TORTURE

CMSM condemns torture in all its forms regardless of putative justification, and encourages support and help for victims of torture throughout the world, but especially in areas under the control of the United States Government.

Rationale: Jesus' death and resurrection revealed the infinite value of each human being in God's eyes. [Cf. Mt 5:44–48; 10:29–31] Torture is a denial of that value. The Catechism of the Catholic Church condemns torture as ''contrary to respect for the person and for human dignity,'' and Gaudium et Spes of the Second Vatican Council [#27] characterizes as criminal ''all violations of the integrity of the human person, such as mutilation, physical and mental torture, undue psychological pressures,'' including them in a list that also contains ''all offenses against life itself, such as murder, genocide, abortion, euthanasia and willful suicide.''

Resolution: Given the universal condemnation of torture in both International Law and religious documents, the Conference of Major Superiors of Men resolves:

To condemn unequivocally any use of torture by agents of any government for any reason;

To encourage its constituencies to use their resources of education, preaching and advocacy to eliminate use of torture as contrary to both natural law and human dignity, and in fundamental opposition to God's salvific love for humanity:

To join with others to work in advocacy for the abolition of torture, and to offer help and support to victims of torture.

The Justice and Peace office will be responsible for implementation.

Additional Facts/Related Circumstances: Background: ''The torturer has become like the pirate and slave trader before him hostis humani generis, an enemy of all mankind.'' So proclaimed the US Court of Appeals for the Second Circuit in 1980 [Filartiga v. Pena-Irala, 630 F.2d 876 (2nd Cir.(N.Y.) Jun 30, 1980)]. In his 1958 Chicago address to the Radio and Television News Directors Association, Edward R. Murrow said, ''Not every story has two sides.''

The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment [1984] defines torture as follows:

For the purposes of this Convention, the term ''torture'' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions. [A listing of other international documents that condemn torture is available at www.apt.ch/un/Torture%20Definition.doc.]

Recent actions brought to light about the involvement of the U.S. military and other branches of the government in the application of torture to prisoners demand a faith-based response. The USCCB has spoken as follows on the issue:

The United States has a long history of leadership and strong support for human rights around the world. Ratifications of the Convention on Civil and Political Rights and the Convention Against Torture embody our nation's commitment to establishing standards of conduct and prohibiting torture and other acts of inhumane treatment of persons in U.S. custody. Tragically, our nation's record has been marred by reported instances of abusive treatment of enemy combatants held in military prisons in Iraq, Afghanistan and Guantanamo Bay, Cuba. [The complete document is available at www.usccb.org/sdwp/international/senateletterretorture100405.pdf.]

The CMSM Executive Committee issued a statement in May of 2004 that included the following:

The Executive Committee of the Conference of Major Superiors of Men is greatly disturbed by the revelations of torture and abuse by U.S. military personnel. We have consistently called for U.S. troops to abide by international standards and laws that govern the treatment of detainees and have questioned the lack of access that international monitoring organizations such as the Red Cross, the Red Crescent, Amnesty International have had at detention centers in Iraq, Afghanistan, and Guantanamo Bay. Reports by independent organizations and military personnel, combined with the photographs and the admission by Administration officials of the abuses indicate that the U.S. military personnel and others contracted by the U.S. to work in the detention centers must be monitored to protect the rights and dignity of detainees.

As people of faith and as leaders of the Catholic congregations of the nearly 23,000 brothers and priests in the United States we believe that we must address this issue. Each human being is created with God-given dignity and each life is precious. This dignity must always be upheld and protected but especially so when an individual is being detained and his or her rights are already limited. They deserved to be treated with dignity and protected from violence and humiliation. As Christians we are deeply troubled that much of the humiliation and abuse violates the beliefs and practices of Islam. As U.S. citizens we are ashamed that those who represent our nation are perpetrating these abuses. We believe that as a nation we stand for the protection of human rights and uphold the dignity of all peoples regardless of their ethnic or religious background and we hold our national and military leaders responsible for the conditions that made these abuses not only possible, but who refused to acknowledge them even after they knew of the abuses.

George Hunsinger of the National Religious Campaign against Torture adapted these words from Dr. Martin Luther King, Jr., delivered at Riverside Church in New York in 1967:

A time comes when silence is betrayal. [People] do not easily assume the task of opposing their government's policy, especially in time of war. We must speak with all the humility that is appropriate to our limited vision, but we must speak. For we are deeply in need of a new way beyond the darkness so close around us. We are called upon to speak for the weak, for the voiceless, for the victims of our nation, for those it calls ''enemy,'' for no document from human hands can make these humans any less our brothers and sisters.

Resources: A powerful article by Gary Haugen titled ''Silence on Suffering: Where are the voices from the Christian community on cruel and degrading treatment of detainees?'' appeared in Christianity Today in October of 2005.

Other useful links: The National Religious Campaign against Torture; Torture Abolition and Survivors Network International; Amnesty International; and Center for the Victims of Torture.

Origin of Proposal: CMSM Justice and Peace Committee.

Budget: none.

Contact Person: T. Michael McNulty, SJ, Justice and Peace Director.

SEPTEMBER 22, 2006.

Hon. JOHN WARNER,
Hon. JOHN MCCAIN,
Hon. LINDSEY GRAHAM,
U.S. Senate,
Washington, DC.

DEAR SENATORS WARNER, MCCAIN AND GRAHAM: We write to express our grave concerns over the reported agreement reached with the White House on the text of the Military Commissions Act of 2006.

While the agreement rejects the Administration's proposal to define and narrow the scope of US obligations under Common Article Three of the Geneva Conventions, its language concerning the War Crimes Act contains potentially dangerous ambiguities. These ambiguities create serious risks for American servicemembers as well as detainees in US custody. We believe that a good faith interpretation of U.S. law, including the Detainee Treatment Act, and U.S. international obligations make it absolutely clear that practices such as waterboarding, cold cell, prolonged standing, sleep deprivation, threats and assaults on prisoners are illegal. These and similar abusive techniques manifestly cause serious mental and physical suffering and constitute grave breaches of Common Article 3. Nonetheless, for several years there have been persistent reports that such techniques have been used on detainees. Moreover, troubling legal justifications for them have been devised and provided to U.S. interrogators. Some of those spurious legal justifications, such as the Bybee Memorandum, have now been abandoned; but there are continuing reports that

other legal justifications have been provided for conduct we consider to be indisputably illegal under both U.S. and international law.

Against this background of repeated legal contortions used to justify and permit torture and abuse—some abandoned, some apparently still in effect—it is absolutely essential that the Congress be clear that these kinds of abusive interrogation techniques are illegal and covered by the War Crimes Act. We urge you to leave no shred of doubt on these crucial issues by naming specific techniques which amount to per se violations of the War Crimes Act or, at a minimum, creating a legislative record that these techniques are prohibited.

We also oppose the provisions in the bill that strip individuals who are detained by the United States of the ability to challenge the factual and legal basis of their detention. Habeas corpus is necessary to avoid wrongful deprivations of liberty and to ensure that executive detentions are not grounded in torture or other abuse. Likewise, we are deeply concerned about the provisions that permit the use of evidence obtained through coercion.

This letter is not intended to offer a comprehensive catalogue of the provisions in the proposed compromise legislation which are of great concern. We appreciate the efforts you have made to insure that abusive interrogations cannot take place and to provide fair judicial procedures for detainees. However, we do not believe that the proposed compromise can be said to have satisfied those important goals and feel strongly that these issues must be resolved.

Sincerely,

Center for Victims of Torture; Brennan Center for Justice at NYU Law School; Center for American Progress Action Fund; Physicians for Human Rights; Washington Office on Latin America; Open Society Policy Center; Amnesty International USA; Human Rights Watch; Center for National Security Studies; Human Rights First; American Civil Liberties Union; Robert F. Kennedy Memorial Center for Human Rights; Center for Human Rights and Global Justice, NYU School of Law.

[From the New York Times, Sept. 28, 2006]

RUSHING OFF A CLIFF

Here's what happens when this irresponsible Congress railroads a profoundly important bill to serve the mindless politics of a midterm election: The Bush administration uses Republicans' fear of losing their majority to push through ghastly ideas about antiterrorism that will make American troops less safe and do lasting damage to our 217-year-old nation of laws—while actually doing nothing to protect the nation from terrorists. Democrats betray their principles to avoid last-minute attack ads. Our democracy is the big loser.

Republicans say Congress must act right now to create procedures for charging and trying terrorists—because the men accused of plotting the 9/11 attacks are available for trial. That's pure propaganda. Those men could have been tried and convicted long ago, but President Bush chose not to. He held them in illegal detention, had them questioned in ways that will make real trials very hard, and invented a transparently illegal system of kangaroo courts to convict them.

It was only after the Supreme Court issued the inevitable ruling striking down Mr. Bush's shadow penal system that he adopted his tone of urgency. It serves a cynical goal: Republican strategists think they can win this fall, not by passing a good law but by forcing Democrats to vote against a bad one so they could be made to look soft on terrorism.

Last week, the White House and three Republican senators announced a terrible deal on this legislation that gave Mr. Bush most of what he wanted, including a blanket waiver for crimes Americans may have committed in the service of his antiterrorism policies. Then Vice President Dick Cheney and his willing lawmakers rewrote the rest of the measure so that it would give Mr. Bush the power to jail pretty much anyone he wants for as long as he wants without charging them, to unilaterally reinterpret the Geneva Conventions, to authorize what normal people consider torture, and to deny justice to hundreds of men captured in error.

These are some of the bill's biggest flaws:

Enemy Combatants: A dangerously broad definition of ''illegal enemy combatant'' in the bill could subject legal residents of the United States, as well as foreign citizens living in their own countries, to summary arrest and indefinite detention with no hope of appeal. The president could give the power to apply this label to anyone he wanted.

The Geneva Conventions: 'The bill would repudiate a half-century of international precedent by allowing Mr. Bush to decide on his own what abusive interrogation methods he considered permissible. And his decision could stay secret—there's no requirement that this list be published.

Habeas Corpus: Detainees in U.S. military prisons would lose the basic right to challenge their imprisonment. These cases do not clog the courts, nor coddle terrorists. They simply give wrongly imprisoned people a chance to prove their innocence.

Judicial Review: The courts would have no power to review any aspect of this new system, except verdicts by military tribunals. The bill would limit appeals and bar legal actions based on the Geneva Conventions, directly or indirectly. All Mr. Bush would have to do to lock anyone up forever is to declare him an illegal combatant and not have a trial.

Coerced Evidence: Coerced evidence would be permissible if a judge considered it reliable—already a contradiction in terms—and relevant. Coercion is defined in a way that exempts anything done before the passage of the 2005 Detainee Treatment Act, and anything else Mr. Bush chooses.

Secret Evidence: American standards of justice prohibit evidence and testimony that is kept secret from the defendant, whether the accused is a corporate executive or a mass murderer. But the bill as redrafted by Mr. Cheney seems to weaken protections against such evidence.

Offenses: The definition of torture is unacceptably narrow, a virtual reprise of the deeply cynical memos the administration produced after 9/11. Rape and sexual assault are defined in a retrograde way that covers only forced or coerced activity, and not other forms of nonconsensual sex. The bill would effectively eliminate the idea of rape as torture.

There is not enough time to fix these bills, especially since the few Republicans who call themselves moderates have been whipped into line, and the Democratic leadership in the Senate seems to have misplaced its spine. If there was ever a moment for a filibuster, this was it.

We don't blame the Democrats for being frightened. The Republicans have made it clear that they'll use any opportunity to brand anyone who votes against this bill as a terrorist enabler. But Americans of the future won't remember the pragmatic arguments for caving in to the administration.

They'll know that in 2006, Congress passed a tyrannical law that will be ranked with the low points in American democracy, our generation's version of the Alien and Sedition Acts.

[From Newsweek, Sept. 25, 2006]

QUESTIONS FOR THE INTERROGATORS

(By Fareed Zakaria]

A fierce debate over military tribunals has erupted in Washington. This is great news. The American constitutional system is finally working. The idea that the war on terror should be fought unilaterally by the executive branch—a theory the Bush administration promulgated for its entire first term—has died. The secret prisons have come out of the dark. Guantánamo will have to be closed or transformed.

The president and the legislative branch are negotiating a new system to determine the guilt or innocence of terrorism suspects, and it will have to pass muster with the courts. It is heartening as well that some of the key senators challenging the president's position are senior Republicans. Principle is triumphing over partisanship. Let's hope the debate will end with the United States' embracing a position that will allow America to reclaim the moral high ground.

The administration's policy has undergone a sea change. The executive branch has abandoned the idea that ''enemy combatants''—that is, anyone so defined by the White House or Defense Department—may be locked up indefinitely without ever being charged, that secret prisons can be maintained, that congressional input or oversight is unnecessary and that international laws and treaties are irrelevant. The Geneva Conventions, in particular, were dismissed during the administration's first term by the then White House counsel Alberto Gonzales for their ''quaint'' protections of prisoners and ''obsolete'' limitations on interrogations. Donald Rumsfeld publicly announced that the Conventions no longer applied. The Bush administration's basic legal argument, formulated by officials like the Justice Department's John Yoo, was that this was a new kind of war, that the executive branch needed complete freedom and flexibility, with no checks or balances.

''There has been a paradigm shift on this whole issue,' a senior administration official told me last week. ''The whole legal framework that underpinned the administration's approach in the first term is gone. John Yoo's arguments are simply no longer applicable. You may disagree with where we draw the lines, but we're now using concepts, principles and approaches that are familiar, within the American legal tradition and that of other civilized nations.''

The administration was forced to do much of this by the Supreme Court's recent Hamdan decision and by the bold opposition of senators like John McCain and Lindsey Graham. But several officials, wishing to remain anonymous because of the sensitivity of the matter, said Secretary of State Condoleezza Rice and national security adviser Stephen Hadley had been urging movement in this direction for some time. ''We concluded that this whole structure of prisoners, interrogations, trials and tribunals had to be placed on a sustainable basis,'' said one official. ''That meant Congress had to be involved and the president had to explain the programs and procedures publicly.''

The crucial issue, on which former Secretary of State Colin Powell and other distinguished military figures have stood up to Bush, is the treatment of prisoners under the Geneva Conventions. Powell explained to me his deep concerns about safeguarding American troops if ''we start monkeying around with the common understanding of the Conventions.'' The administration claims that it merely wants to provide specific guidelines,

but the real aim appears to be to let CIA employees engage in ''rough'' interrogations without fear of legal sanctions.

Powell and the senators argue that the guidelines are better left as they are—with a kind of calculated ambiguity that deters U.S. interrogators from testing the limits. ''Clarifying' our treaty obligations will be seen as 'withdrawing' from them,'' warns Senator Graham, a former staff judge advocate in the Air National Guard. He's right. No other nation has sought to narrow the Geneva Conventions' scope by ''clarifying'' them. Does the United States want to be the first? Why not retain the status quo and then consult with other countries that are also grappling with terror suspects and arrive at a genuinely ''common'' clarification of the Conventions? If we ''clarify'' the Conventions to allow, say, waterboarding and other ''rough'' procedures, what happens to a CIA operative who is captured in a foreign country? Can that country ''clarify'' the Conventions and torture him? If it does, would the United States have any basis to condemn it and take action under international law?

Powell made another argument to me. ''Part of the war on terror is an ideological and political struggle,'' he said. ''Our moral posture is one of our best weapons. We're not doing so well on the public-diplomacy front. This would be the wrong signal to send the world.'' The administration seems blind to this political reality. After Guantánamo, Abu Ghraib, Haditha and more, America desperately needs a symbol that showcases its basic decency. Quibbling with the Geneva Conventions is the wrong signal, by the wrong administration, at the wrong time.

Mr. UDALL of Colorado. Mr. Speaker, the Senate-passed bill before us today is identical to H.R. 6166. I could not support that bill when the House considered it earlier this week, and nothing that has happened since then has caused me to change my view that it should not be enacted. So, I must continue to oppose it.

As I said earlier, I agree that Congress should establish clear statutory authority for detaining unlawful enemy combatants and using military tribunals to try them. In fact, I thought this should have been done long age because I took seriously the warnings of legal experts who said the system established by President Bush's unilateral Executive Order lacked departed too far from America's fundamental legal traditions to be immune from serious legal challenges.

That is why for several years I have cosponsored bills to replace that Executive Order with a sound statute that would allow prosecutions to proceed without the same vulnerability to challenge.

Unfortunately, until recently neither the president nor the Republican leadership thought there was a need for Congress to act—the president preferred to insist on unilateral assertions of executive authority, and the leadership was content with an indolent abdication of Congressional authority and responsibility.

Then, earlier this year, the Supreme Court put an end to that approach with its decision in the case of Hamdan v. Rumsfeld, which struck down the system established by the Executive Order—just what many of us had seen coming, and which we had sought to avoid through legislation.

So, we are voting on this bill only because the Supreme Court has forced the Administration to do what it should have done much sooner—come to Congress for legislation. And the voting is occurring this week, under rushed procedures that do not permit consideration of any changes, because, above all, the Republicans have decided they need to claim a legislative victory when they go home to campaign, to help take voters' minds off the Administration's missteps and their own failures.

But I think it is less important to get the job done before the election than to do it right. And, regrettably, I remain convinced that this bill fails that test.

I remain concerned about the bill's specific provisions. But just as serious are my concerns about what the bill does not say. In particular, I am concerned about the lack of any provisions to prevent indefinite detentions of American citizens who have never left the United States.

I cannot support any legislation intended to give the president—any president, of any party authority to throw an American citizen into prison without what the Supreme Court has described as ''a meaningful opportunity to contest the factual basis for that detention before a neutral decisionmaker.''

As I said when the House first debated this legislation, I prefer to err on the side of caution when I must vote on a measure that is not more clear on this point. And since that earlier debate, my concern—and my unwillingness to vote for this legislation—has been heightened by analyses of experts such as Professor Bruce Akerman of the Yale Law School.

In an analysis published after the earlier vote here in the House—which I am attaching for the benefit of our colleagues—Professor Akerman says: ''The legislation . . . authorizes the president to seize American citizens as enemy combatants, even if they have never left the United States. And once thrown into military prison, they cannot expect a trial by their peers or any other of the normal protections of the Bill of Rights. . . . This grants the president enormous power over citizens and legal residents. They can be designated as enemy combatants if they have contributed money to a Middle Eastern charity, and they can be held indefinitely in a military prison. . . . What is worse, if the federal courts support the president's initial detention decision, ordinary Americans would be required to defend themselves before a military tribunal without the constitutional guarantees provided in criminal trials.''

And, as Professor Akerman notes: ''We are not dealing with hypothetical abuses. The president has already subjected a citizen to military confinement. Consider the case of Jose Padilla. A few months after 9/11, he was seized by the Bush administration as an ''enemy combatant'' upon his arrival at Chicago's O'Hare International Airport. He was wearing civilian clothes and had no weapons. Despite his American citizenship, he was held for more than three years in a military brig, without any chance to challenge his detention before a military or civilian tribunal. After a federal appellate court upheld the president's extraordinary action, the Supreme Court refused to hear the case, handing the administration's lawyers a terrible precedent. . . .

''But the bill also reinforces the presidential claims, made in the Padilla case, that the commander in chief has the right to designate a U.S. citizen on American soil as an enemy combatant and subject him to military justice. Congress is poised to authorize this presidential overreaching. Under existing constitutional doctrine, this show of explicit congressional support would be a key factor that the Supreme Court would consider in assessing the limits of presidential authority.''

I do not have the legal expertise to say that Professor Akerman is completely right in this analysis. But I cannot in good conscience vote for this bill on the mere hope that he is wrong.

And, as I said when the House first considered this bill, it is clear that several of its provisions raise enough legal questions that military lawyers say there is a good chance the Supreme Court will rule it unconstitutional.

They may or may not be right about that, but their views deserve to be taken seriously—not only because we in Congress have sworn to uphold the Constitution but also because if our goal truly is to avoid unnecessary delays in bringing terrorists to justice, we need to take care to craft legislation that can and will operate soon, not only after prolonged legal challenges.

Finally, I remain concerned that the bill gives the president the authority to ''interpret the meaning and application'' of U.S. obligations under the Geneva Conventions. Instead of clearly banning abuse and torture, the bill leaves in question whether or not we are authorizing the Executive Branch to carry out some of the very things the Geneva Conventions seek to ban.

I cannot forget or discount the words of RADM Bruce MacDonald, the Navy's Judge Advocate General, who told the Armed Services Committee ''I go back to the reciprocity issue that we raised earlier, that I would be very concerned about other nations looking in on the United States and making a determination that, if it's good enough for the United States, it's good enough for us, and perhaps doing a lot of damage and harm internationally if one of our service men or women were taken and held as a detainee.''

I share that concern, and could not in good conscience support legislation that could put our men and women in uniform at risk.

Mr. Speaker, as I said earlier, establishing a system of military tribunals to bring to trial some of the worst terrorists in the world shouldn't be a partisan matter. It also should not be handled in a rush, without adequate care to get it right. Unfortunately, that has been the process used to develop this legislation and the result is a measure that I think has too many flaws to deserve enactment as it stands.

So, as I said earlier, I cannot support it.

[From the Los Angeles Times, Sept. 28, 2006]

THE WHITE HOUSE WARDEN

(By Bruce Ackerman)

Buried in the complex Senate compromise on detainee treatment is a real shocker, reaching far beyond the legal struggles about foreign terrorist suspects in the Guantanamo Bay fortress. The compromise legislation, which is racing toward the White House, authorizes the president to seize American citizens as enemy combatants, even if they have never left the United States. And once thrown into military prison, they cannot expect a trial by their peers or any other of the normal protections of the Bill of Rights.

This dangerous compromise not only authorizes the president to seize and hold terrorists who have fought against our troops ''during an armed conflict,'' it also allows him to seize anybody who has ''purposefully and materially supported hostilities against the United States.'' This grants the president enormous power over citizens and legal

residents. They can be designated as enemy combatants if they have contributed money to a Middle Eastern charity, and they can be held indefinitely in a military prison.

Not to worry, say the bill's defenders. The president can't detain somebody who has given money innocently, just those who contributed to terrorists on purpose.

But other provisions of the bill call even this limitation into question. What is worse, if the federal courts support the president's initial detention decision, ordinary Americans would be required to defend themselves before a military tribunal without the constitutional guarantees provided in criminal trials.

Legal residents who aren't citizens are treated even more harshly. The bill entirely cuts off their access to federal habeas corpus, leaving them at the mercy of the president's suspicions.

We are not dealing with hypothetical abuses. The president has already subjected a citizen to military confinement. Consider the case of Jose Padilla. A few months after 9/11, he was seized by the Bush administration as an ''enemy combatant'' upon his arrival at Chicago's O'Hare International Airport. He was wearing civilian clothes and had no weapons. Despite his American citizenship, he was held for more than three years in a military brig, without any chance to challenge his detention before a military or civilian tribunal. After a federal appellate court upheld the president's extraordinary action, the Supreme Court refused to hear the case, handing the administration's lawyers a terrible precedent.

The new bill, if passed, would further entrench presidential power. At the very least, it would encourage the Supreme Court to draw an invidious distinction between citizens and legal residents. There are tens of millions of legal immigrants living among us, and the bill encourages the justices to uphold mass detentions without the semblance of judicial review.

But the bill also reinforces the presidential claims, made in the Padilla case, that the commander in chief has the right to designate a U.S. citizen on American soil as an enemy combatant and subject him to military justice. Congress is poised to authorize this presidential overreaching. Under existing constitutional doctrine, this show of explicit congressional support would be a key factor that the Supreme Court would consider in assessing the limits of presidential authority.

This is no time to play politics with our fundamental freedoms. Even without this massive congressional expansion of the class of enemy combatants, it is by no means clear that the present Supreme Court will protect the Bill of Rights. The Korematsu case—upholding the military detention of tens of thousands of Japanese Americans during World War II—has never been explicitly overruled. It will be tough for the high court to condemn this notorious decision, especially if passions are inflamed by another terrorist incident. But congressional support of presidential power will make it much easier to extend the Korematsu decision to future mass seizures.

Though it may not feel that way, we are living at a moment of relative calm. It would be tragic if the Republican leadership rammed through an election-year measure that would haunt all of us on the morning after the next terrorist attack.

Mrs. CHRISTENSEN. Mr. Speaker, I rise in opposition to S. 3930, the Military Commission Act of 2006 because it is too broad, overly inclusive and potentially unconstitutional. While I also vividly remember the horrors of the 9/11 terrorist attacks, I believe that Congress should carefully and constitutionally craft a bill which effectively punishes all terrorists and potential terrorists while at the same time maintaining the safety and security of our citizens from future terrorist attacks.

The definition of an ''unlawful combatant'' in Section 948(a.) of this bill is indicative of its over-inclusiveness. It creates legal loopholes and in my view, leaves even U.S. Citizens vulnerable to being classified as unlawful combatants. This definition does not exclude nor does it seek to exclude U.S. Citizens from being indefinitely detained. The President or one of his designees can simply determine that a fellow U.S. Citizen is an ''unlawful enemy combatant'' and this would suffice as sufficient evidence to detain this citizen indefinitely without any access to his family, an attorney or any form of judicial review.

Furthermore, the term ''purposefully and materially supported hostilities'' is overly broad and would lead to many innocent acts being transformed into terrorist activities.

In an article, Aziz Huq astutely demonstrates the broadness of the term by showing how a fictional character that owns a bodega and allowed Lebanese immigrants to use its services to send money to ''West Beqaa'', an area within the Hezbollah controlled area of Lebanon protectorate is found to have ''purposefully and materially supported hostilities. This scenario is not very farfetched, this piece of legislation has the potential to impact the very foundation of civil liberties and fundamental freedoms on which this country is built. It will impact the American Citizen's freedom of speech, freedom of association and the list could go on.

The bill also further undermines U.S. credibility in the eyes of the international community by granting the President the authority to interpret Art. III of the Geneva Convention an international treaty to which the U.S. is a signatory. This language sets a bad precedence in the international community and only frustrates the goals of established international laws, norms and customs.

If the U.S. President is allowed to reinterpret and apply an international treaty, what would stop other nations from doing the same? Additionally, as noted in his letter to Senator MCCAIN, former U.S. Secretary of State Colin Powell, posited that allowing the President to interpret the Geneva Convention would expose U.S. soldiers to more dangers. Colin Powell emphatically opposed this provision.

S. 3930 also violates separation of powers and the constitutional protection this provides, by stripping the federal court of its habeas review. The independence of the judiciary is one of the fundamental principles on which this democracy is built. Under this bill, the normal appeals process would not be available to the detained ''unlawful enemy combatant.'' Instead the detainee who wishes to appeal an adverse decision has to appeal to a newly established ''Court of Military Commission Review''.

Terrorists must be brought to justice and we must act accordingly to secure our country and our citizens. However, these same goals can be achieved in a constitutional manner. I urge my colleagues to oppose this unworthy bill.

Mr. MICHAUD. Mr. Speaker, the final language for the bill was brought to the floor quickly and without thorough review by the House. I believe that it is important to have a system to try accused terrorists for their war crimes in a quick and fair way. In my original review of the bill, I believed that it took steps to protect fundamental human rights, prevent torture and provide for a fair legal process.

As I have heard from more and more legal experts and from my constituents, it is clear that this bill does not create a system that meets our high American standards for a fair trial and human rights.

Make no mistake; I believe that convicted terrorists must be punished for their war crimes. But it must be done in such a way that the American people are confident that our values are upheld. I do not believe that this bill makes this clear to the American people or to the international community that looks to us as a place of human rights and fairness.

Some people may question me for changing my vote. I believe that elected officials must have the strength to recognize new information and to take it into account to make the right decision. I wish President Bush would do the same thing with our policies in Iraq.

Mr. SENSENBRENNER. Mr. Speaker, I yield back the balance of my time

The SPEAKER pro tempore. All time for debate has expired.

Pursuant to House Resolution 1054, the Senate bill is considered read and the previous question is ordered.

The question is on the third reading of the Senate bill.

The Senate bill was ordered to be read a third time, and was read the third time.

The SPEAKER pro tempore. The question is on the passage of the Senate bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. SENSENBRENNER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, further proceedings on this question will be postponed.

CONFERENCE REPORT ON H.R. 5122, JOHN WARNER NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2007

Mr. HUNTER of California (during consideration of H. Res. 1053) submitted the following conference report and statement on the bill (H.R. 5122) to authorize appropriations for fiscal year 2007 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes:

[Conference Report will appear in Book II of CONGRESSIONAL RECORD dated September 29, 2006.]

WAIVING REQUIREMENT OF CLAUSE 6(a) OF RULE XIII WITH RESPECT TO CONSIDERATION OF CERTAIN RESOLUTIONS

Mr. COLE of Oklahoma. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1053 and ask for its immediate consideration.