She was the fourth daughter of the sonless Howard and Alma Cotton. I was told that my grandmother, knowing she would be expected to try again, was too angry to think of a name for the baby. The Cottons owned a general store in Dana, Mass. Ruth, the oldest sister, finally looked at some kind of candy display that offered a list of names. (It was a sort of game where you found out who would be your sweetheart, I believe.) She picked the name Barbara for her baby sister.

At least, that's one version. Ruth told it to me one night after making me promise never to tell my mother.

The next baby was a boy, Gaylord. I don't think my mother ever completely forgave him for being the right answer.

She was not the right answer, but she decided to know the right answers. She was a whiz in school. She was high school valedictorian. She was never quite at home.

She wasn't as tough or as solid as the rest of her family. She was pretty, chatty, restless, troublemaking. Now and then, a teacher would notice her and realize she was a little bit lost. One woman made a point of taking her places, letting her catch glimpses of the world outside rural Massachusetts.

One such place, of course, was Boston, which was a very thirsty town. Years before my mother was born, the city began to outgrow its supply of water. Bostonians cast their eyes around and noticed the Swift River Valley. It might be possible to dam the whole thing up and make a reservoir. Yes, that could be done.

And what about the people who were living right where the enormous body of water would be?

They would have to leave.

Four little towns were dis-incorporated and depopulated. The Lost Towns of the Quabbin. Dana was one of them. The Cottons left a few years early, because Howard had four daughters, and he believed that rough men would be arriving in great numbers for the huge construction projects. He didn't want that kind of trouble.

Gone, gone, gone, the four towns. And gone, gone, gone the five Cottons. Ruth, Gladys, Arlene, Gaylord. And Monday night, the last of them, Barbara.

Nothing was ever exactly home. Nowhere completely right.

''What's the best place you ever lived?'' she asked me again and again from hospital beds and wheelchairs, really asking herself.

She graduated from North Brookfield High School—did she mention she was valedictorian?—and eked out a couple of years at Boston University. She came to Hartford. She was a bobby-soxer, overheated and frivolous. She and her friends followed Sinatra around after his show in the city and had a snowball fight with him.

The years went by, full of dates and parties and boyfriends and jobs. Hartford was fun. She met a man, a very peculiar man. He lived in a boarding house on Asylum Hill and worked at United Aircraft. He was handsome and brooding and mercurial. Nobody had ever heard of him. And then, on a single day, this obscure man in the boarding house sold two different plays he had written to Broadway producers.

She couldn't stay away from this man.

They married and lived for a while on Fifth Avenue next to a huge park that scared her a little. They lived for a while in Beverly Hills. Their agent was Swifty Lazar and he took them to all the swank spots; and she didn't have to throw snowballs at the big stars. They chatted away from adjoining tables at Chasen's.

But that didn't last. Nothing ever seemed to last. Nowhere was exactly home. Things were never quite right. It was hard, really, to settle down.

She had a son, and she loved him. It was hard to tell him that in the traditional ways. She wasn't at home in the world. She pushed him hard to work and achieve so that he would feel safer than she did.

She had a grandson, and she loved him. She took him to the park and showered him with presents. On New Year's Eves, she would decorate her apartment and buy hats and noisemakers for her husband and the little boy, and they'd eat shrimp and drink sparkling cider.

Her husband died, and she was alone.

And then she began to forget things. Her son took her to a neurologist, and the doctor said, ''I'm going to say three words to you, and I want you to remember them because I'll ask you about them in a little while. Banana chair sunset.''

He asked her quite a few other things, and, in the most charming manner possible, she revealed how little she could remember. Laid out there in the doctor's office, it was breath-taking, like the water pooling up and overspreading four whole towns.

''Now,'' said the doctor, ''Do you remember any of those three words?''

''What three words?'' she asked.

And that was the beginning of the end. Banana chair sunset.

A couple of years went by. She fell. She got sick.

On Monday evening, her hands and feet grew cold.

The light appeared. You know, the light? The soothing, comforting, all-loving light? She asked the nursing home staff to turn it off. It was bothering her. Things were not quite right. This room was not quite home.

I picture a worried angel, conferring with his peers. She wants the light turned off.

Has this ever come up before? Don't people always like the light?

A few of us sat in a room, in chairs, watching the sunset spread across the bricks of a courtyard outside the window. We talked so that she could hear our voices. And she fell asleep and was gone.

I am surprised to find my heart is broken. My son's heart is broken, too.

Banana chair sunset.

Maybe there's a place you go where finally, finally, everything is just right.

VETERANS' MEMORIALS, BOY SCOUTS, PUBLIC SEALS, AND OTHER PUBLIC EXPRESSIONS OF RELIGION PROTECTION ACT OF 2006

SPEECH OF

HON. MARK UDALL

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Tuesday, September 26, 2006

Mr. UDALL of Colorado. Mr. Speaker, I think this bill is unnecessary and unwise, and I cannot vote for it.

Current law says that federal judges have discretion to require a state or local government to pay the attorneys' fees of individual citizens who win lawsuits challenging government actions that violate the Constitution.

This bill would take away part of that discretion, by barring judges from making such awards in cases involving the Constitution's prohibition of the establishment of religion.

Nothing in today's debate on the bill has convinced me that that so many judges have abused their discretion that Congress should limit it, or that the current law is broken and requires repair.

And I am very concerned that the effect of this bill would be to weaken Americans' constitutional rights, as the Baptist Joint Committee for Religious Liberty has warned in a recent letter that says ''passage of H.R. 2679 would encourage elected officials to violate the Establishment Clause whenever they find it politically advantageous to do so. By limiting the remedies for a successful plaintiff, this measure would remove the threat that exists to ensure compliance with the Establishment Clause.''

I think the Joint Committee is right—and that what they say about the Establishment Clause is just as true about the rest of the Bill of Rights.

For example of where this might lead, consider the 2003 lawsuit against the school district in Ann Arbor, Michigan.

In that case, the plaintiffs complained that a former student's right to free speech was abridged when school officials denied the student an opportunity to give her opinion of homosexuality at a school forum on diversity. The judge ruled they were right, and ordered the school district to pay damages, attorneys' fees and costs to the Thomas More Law Center, an Ann Arbor-based law firm organized to argue on behalf of Christians in religious freedom cases.

I have no reason to think that was an abuse. I am glad that the law provides judges with the discretion to award attorneys' fees when people successfully defend their constitutional rights. This bill would limit that discretion unnecessarily, and so I cannot support it.

MILITARY COMMISSIONS LEGISLATION ACT OF 2006

SPEECH OF

HON. MARK UDALL

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, September 27, 2006

Mr. UDALL of Colorado. Mr. Speaker, I regret that I cannot support this bill in its present form.

After 5 years of negligence by both the House Republican leadership and the president, today they are insisting the House vote rapidly on a long-overdue bill to establish military commissions to try ''unlawful enemy combatants.''

This should have been done sooner and the legislation definitely should be better.

If President Bush had come to Congress sooner with his request for legislation establishing military commissions, we could have avoided prolonged legal battles and delay in getting a system in place. But despite his stated interest in bringing the terrorists to justice, this president has seemed to be more interested in enhancing executive branch powers than he has in trying and convicting those who would harm Americans.

Five years ago, when President Bush first issued his executive order to set up military commissions, legal experts warned that the commissions lacked essential judicial guarantees, such as the right to attend all trial proceedings and challenge any prosecution evidence. I took those views very seriously because those experts made what I thought was a compelling case that the proposed system

would depart too far from America's fundamental legal traditions to be immune from serious legal challenges.

So, beginning 3 years ago, I have cosponsored bills that would establish clear statutory authority for detaining enemy combatants and using special tribunals to try them. Unfortunately, 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.

In the case of Hamdan v. Rumsfeld, the Court ruled that the military commissions set up by the Administration to try enemy combatants lacked constitutional authority in part because their procedures violated basic tenets of military and international law, including that a defendant must be permitted to see and hear evidence against him. Although the Court did not rule that the president is prohibited from establishing military commissions, it did determine that the current system isn't a ''regularly constituted court'' and doesn't provide judicial guarantees.

We are voting on this bill—on any bill, in fact—only because that Hamdan decision forced the Administration to come to Congress, not because President Bush has been in any hurry to try the more than 400 detainees at Guantanamo under sound procedures based on specific legislation.

And we are being forced to vote today—not later, and only on this specific bill, with no opportunity to even consider 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 failure to pass legislation to address the voters' concerns.

In other words, for the Bush Administration and the Republican leadership it's business as usual—ignore a problem as long as possible, then come up with a last-minute proposal developed without any input from Democrats, allow only a ''take it or leave it'' vote, and then smear anyone who doesn't support it as failing to support our country.

That's been their approach to almost everything of importance, so while it's disappointing it's not surprising that the Administration and the Republican leadership have not approached this important topic more thoughtfully.

The goal, of course, should be to have legislation to help make America safer that can withstand the proper scrutiny of the courts while meeting the needs of the American people and not undermine our ability to have the support of our allies.

The bill originally proposed by the president fell short of meeting those standards. I opposed it because I thought it risked irreparably harming the war on terror by tying up the prosecution of terrorists with new untested legal norms that did not meet the requirement of the Hamdan decision; endangering our service members by attempting to rewrite and limit our compliance with Common Article Three of the Geneva Conventions; undermining basic standards of U.S. law; and departing from a body of law well understood by our troops.

I was not alone in rejecting the bill the president originally proposed. As we all know, several members of the other body, including Senator WARNER, Chairman of the Senate Armed Services Committee, and other members of that committee, including Senators MCCAIN and GRAHAM, also had serious objections to that legislation and, joined by Senator LEVIN, the ranking Democrat on the Committee, developed legislation that struck the important balance between military necessity and basic due process.

When the House Armed Services Committee took up the president's bill, I joined in voting for an alternative, offered by our colleague, Representative SKELTON, the Committee's senior Democratic member, that was identical to that bipartisan Senate legislation.

That alternative would have established tough but fair rules, based on the Uniform Code of Military Justice and its associated regulations, for trying terrorists. This would have fully responded to what the Supreme Court identified as the shortcomings in the previous system. But the Republican leadership insisted on moving forward with the president's bill rather than working in a bipartisan manner, and so that alternative was rejected. As a result, I voted against sending the president's bill to the House floor.

But the bill now before the House is neither the president's bill nor the bipartisan bill approved by the Senate Armed Services Committee. Instead, it is a new measure, just introduced, that differs in many respects and reflects the result of further negotiations involving the White House, several Republican Senators, and the House Republican leadership.

And while this new bill includes some improvements over the president's original bill, it still does not meet the test of deserving enactment, and I cannot support it.

Some of my concerns involve the bill's specific provisions. But just as serious are my concerns about what the bill does not say.

For example, the bill includes provisions intended to bar detainees from challenging their detentions in federal courts by denying those courts jurisdiction to hear an application for a writ of habeas corpus ''or any other action against the United States or its agents relating to any aspect of the detention, transfer, treatment, trial, or conditions of confinement'' by or on behalf of an alien that the government—that is, the Executive Branch—has determined ''to have been properly detained as an enemy combatant or is awaiting such determination.''

These provisions, which the bill says are to apply to cases now before the courts, evidently allow indefinite detention, or detention at least until the war on terrorism is ''over.''

And while the reference to ''aliens'' seems to mean that this is not to apply to American citizens—who are not immune from being considered ''enemy combatants''—some legal experts say it is not completely clear that citizens would really have the ability to challenge their detentions.

I could not 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,'' and I prefer to err on the side of caution before voting for a measure that is not more clear than the bill before us on this point.

Also, these sweeping jurisdiction-stripping provisions, as well as other parts of the bill, raise enough legal questions that military lawyers say there is a good chance the Supreme Court will rule it unconstitutional. I do not know if they are 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.

In addition, I am 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 Rear Adm. 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 servicemen 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, establishing a system of military tribunals to bring to trial some of the worst terrorists in the world shouldn't be a partisan matter. I think we can all agree that there is a need for a system that can deliver swift and certain justice to terrorists without risking exposing Americans to improper treatment by those who are our adversaries now or who may become adversaries in the future.

Unfortunately, I think there is too much risk that the bill before the House today will not accomplish that goal and has too many flaws to deserve enactment as it stands. So, I cannot support it.