

MILITARY COMMISSIONS ACT OF
2006

SPEECH OF

HON. SHEILA JACKSON-LEE

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Friday, September 29, 2006

Ms. JACKSON-LEE of Texas. Mr. Speaker, 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 is fundamentally fair and consistent with the Geneva Conventions.

We should abide by the Geneva Conventions not out of some slavish devotion to international law or desire to coddle terrorists, but because adherence to the Geneva Conventions 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 5 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 asserting that the military commissions established therein satisfy this standard, the fact is that many other nations will disagree. 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 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 service members 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 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 3 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.

Second, any system of military commissions to deal with detainees should be required to be reauthorized in 3 years. There are several good reasons 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 3 years, we give Congress the ability to carefully review how this statute is working in the real world.

Providing for a reauthorization in 3 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 who 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 9/11 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.

MELANIE LOMAX

HON. DIANE E. WATSON

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, September 29, 2006

Ms. WATSON. Mr. Speaker, I rise with great sadness to announce the untimely passing of my good friend Melanie Lomax.

The City of Los Angeles, California, and our Nation have lost one of the strongest advocates for civil rights. Attorney Melanie Lomax was a dedicated leader and committed fighter for the rights of the poor and voiceless.

When Melanie witnessed injustice towards others she spoke out vociferously regardless of who was involved. She was especially determined to hold the LAPD accountable for acts of excessive force and brutality while serving as President of the Los Angeles Police Commission.

Bright, articulate and focused, Melanie, god-daughter to former Los Angeles Mayor Tom Bradley, never wavered in her mission to help others. She felt deeply and emotionally about defenseless people and often found herself isolated while fighting unpopular causes. But she would always forge ahead in the cause of justice.

Melanie's untimely death is a substantial loss to all of us. It is hard to imagine anyone else stepping into the void she leaves with the same gusto, vigor, and fervor. She will be sorely missed.

RECOGNIZING THE 15TH ANNIVERSARY OF AZERBAIJAN'S INDEPENDENCE

HON. SOLOMON P. ORTIZ

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Friday, September 29, 2006

Mr. ORTIZ. Mr. Speaker, as Co-Chair of the Azerbaijan Caucus, I rise to congratulate one of our key democratic allies—the Republic of Azerbaijan—as it prepares to celebrate the 15th Anniversary of its independence on October 18.

Azerbaijan is one of the United States' leading allies on the war against terrorism, with the distinction of being among the first to offer our nation unconditional support; providing airspace and airport use for Operation Enduring Freedom in Afghanistan. And, Azerbaijan was also the first Muslim nation to send troops to Iraq. Though bilateral cooperation on terrorism issues between the United States and Azerbaijan predates September 11, 2001, our relations were strengthened following their immediate, and heretofore unwavering, support against the war on terrorism.

Azerbaijan cooperates with the United States within international and regional institutions including the UN, Organization for Security and Cooperation in Europe (OSCE) and NATO's Partnership for Peace program. Regionally, Azerbaijan works together with the United States within the framework of the Organization for Democracy and Development—GUAM which is comprised of Azerbaijan, Georgia, Moldova, and Ukraine. GUAM was created as a political, economic and strategic alliance in order to collaboratively address common risks and threats and thereby strengthen the independence and sovereignty of its member states.

The Republic of Azerbaijan is a standout nation among the South Caucasus countries, with a population of 8 million people and an ambitious economic policy. During the last decade Azerbaijan has been implementing structural reforms and adopting numerous laws and legislative changes, paving the way toward further integration with in the global economy. The nation has been moving toward a more diversified economy to achieve sustainable growth and to meet the social and development needs of its population.

Diversification of the economy and ensuring the development of non-oil sectors is a priority

for the government. This policy includes implementation of projects and programs that create favorable conditions for development of private entrepreneurship, attracting investment in non-oil sectors, creating new jobs, evaluation of potential industries and markets and development of infrastructure in the regions.

The last 15 years of independence has not been without challenges, but the country has grown stronger with each new challenge it faces. Let us today commend the Republic of Azerbaijan on their forthcoming 15th Anniversary celebrations. And, let us also commit ourselves to their continued development as a global partner against the terrorism, toward economic growth, diversification of energy resources, and strengthening stability and security in the region.

A BLUEPRINT FOR LEAVING IRAQ NOW

HON. JAMES P. MCGOVERN

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Friday, September 29, 2006

Mr. MCGOVERN. Mr. Speaker, former Senator George McGovern and William R. Polk, founder and director of the Center for Middle Eastern Studies at the University of Chicago, have co-authored a new book, *Out of Iraq*, that is being released in October 2006 by Simon & Schuster.

I would like to share with my colleagues an excerpt published in the October edition of Harper's Magazine.

THE WAY OUT OF WAR

(By George S. McGovern and William R. Polk)

A BLUEPRINT FOR LEAVING IRAQ NOW

Staying in Iraq not an option. Many Americans who were among the most eager to invade Iraq now urge that we find a way out. These Americans include not only civilian "strategists" and other "hawks" but also senior military commanders and, perhaps most fervently, combat soldiers. Even some of those Iraqis regarded by our senior officials as the most pro-American are determined now to see American military personnel leave their country. Polls show that as few as 2 percent of Iraqis consider Americans to be liberators. This is the reality of the situation in Iraq. We must acknowledge the Iraqis' right to ask us to leave, and we should set a firm date by which to do so.

We suggest that phased withdrawal should begin on or before December 31, 2006, with the promise to make every effort to complete it by June 30, 2007.

Withdrawal is not only a political imperative but a strategic requirement. As many retired American military officers now admit, Iraq has become, since the invasion, the primary recruiting and training ground for terrorists. The longer American troops remain in Iraq, the more recruits will flood the ranks of those who oppose America not only in Iraq but elsewhere.

Withdrawal will not be without financial costs, which are unavoidable and will have to be paid sooner or later. But the decision to withdraw at least does not call for additional expenditures. On the contrary, it will effect massive savings. Current U.S. expenditures run at approximately \$246 million each day, or more than \$10 million an hour, with costs rising steadily each year. Although its figures do not include all expenditures, the Congressional Research Service listed direct