

if that is not the case, then we have the authority to subpoena documents and evidence to bring this issue before the Congress, a number of committees here.

I think it's important that people like you and all of our colleagues ask the White House to relent and let us have these hearings, which I think are extremely important, because the American people want to know about this, because everybody is concerned about the terrorist threat that we face in this country.

So the President can't claim executive privilege. If he does that, then of course they can block us from having a hearing. But even if he does that, they have to prove that there's a reason for executive privilege. And we have subpoena power here in the Congress of the United States. And so the committee chairmen, chairmen of these various committees, if it isn't something that's top secret or highly classified, they can subpoena this information and bring it before the Congress.

I hope that you and the rest of our colleagues will do everything possible—I know you will—everything possible to make sure the American people know everything that happened and everything that led up to this tragedy.

Once again, thank you very, very much for taking this Special Order.

□ 2100

Mr. MCCAUL. I thank the gentleman from Indiana.

Again, reclaiming my time, I think I speak for most Americans, we do not want to see this thing swept under the rug. We don't want to see the rush to judgment that it was the act of one man—and perhaps it was—but the American people need to know the truth, and they need to know who he was talking to. And when the reporting came out that he was talking to the top al Qaeda recruiter in Yemen by emails and that there were communications in Pakistan, that raises big flags in this case. We cannot ignore that.

It is our constitutional duty to ask the tough questions to get to the bottom of this case so that the American people, through their representatives, can find out what really happened that tragic day on November 5. And if we don't do that, and if the majority does not want to do that and bows to the President and his request, I think we are being derelict in our responsibilities.

Again, this is a man who places allegiance more to the Koran than the Constitution, in his own words. "Son of Allah" on his business cards, dressed in the Pakistan garb, classic of the suicide bomber techniques to will your possessions away, wear the dress the morning of. I think he fully expected not to survive the incident. He did. And the best evidence we have is inside his head.

Of course the first thing he did was ask for an attorney, and he is not

speaking. That is the same thing Khalid Sheikh Mohammed asked for. When he first got arrested, Khalid Sheikh Mohammed asked for two things: I want a lawyer, and I want to be taken to New York City. And unfortunately, Khalid Sheikh Mohammed got his wish that day because Khalid Sheikh Mohammed is going to be brought to New York now under the President's new guidelines.

I think getting to the bigger picture of all this, as we've taken "war on terror" out of the vernacular, we are moving back to this Clinton era where these terrorists are treated not as enemies of war but as criminal defendants. We are in a war, like it or not. We are in a war. We need to treat these people who mean to do us harm as enemies of war. The military tribunals are the best way to prosecute. We are going to bring Mr. Khalid Sheikh Mohammed into the United States to the very city where 3,000 people were killed at his hands.

I was a Federal prosecutor. The Southern District of New York is one of the finest U.S. Attorney's offices and is probably best equipped to handle that prosecution, but the Federal rules of evidence are very different from the military tribunals. It's going to withhold evidence from trial. It will not protect classified information. It will turn to a showcase. And as in the case of Moussaoui, whose computer records were ruled inadmissible, he got life imprisonment. Ramsey Yousef, the perpetrator of the '93 World Trade Center got life imprisonment. Khalid Sheikh Mohammed deserves the death penalty. It was an act of war.

Now, I don't know if the administration is saying, you know, basically that the war on terror is over, it's over so let's just go ahead and bring these people in and treat them like criminal defendants, but I think they are making a serious mistake, not only compromising the prosecutions of these terrorists but bringing them into a city that has been a target for quite some time. It's only going to heighten the state of alertness in New York City and become a mecca for jihadists around the world to come to New York to see the spectacle of a show trial. They ought to be tried in Guantanamo. Guantanamo never should have been closed or the order should never have been sent out to close it, and a military tribunal is best equipped to prosecute these individuals.

Just let me say in closing, we've been dealing with the health care legislation. It is very important for the Nation, but we were struck by a heavy blow last week, November 5, at Fort Hood. We never expected it to be one of our own. We never expected an act of treason on that level, killing 13 soldiers and wounding 30 others, firing off 100 rounds, yelling out "Allahu Akbar," talking to known al Qaeda operatives in Yemen and possibly Pakistan. There are too many questions in this case, too many red flags, and the

American people deserve the answer. We in the Congress—and I know my good friend from Indiana stands with me—we're not going to sit back and follow the orders of this President to stand down and not exercise our constitutional responsibility.

There is a separation of branches of government under the Constitution for a good reason. The executive branch can't sweep things under the rug. The American people, through their representatives, need to find out what really happened. The American people deserve the truth in this case. They deserve hearings, a full investigation and the truth to come out.

I commend our great fighting men and women. I have had so many constituents who have gone through Fort Hood on their missions to Iraq and Afghanistan. They were serving very bravely and nobly in a very, very important struggle between radical Islam and freedom, between the jihadists and democracy. We will eventually win that struggle. We pray for the victims' families, and we pray that God holds their loved ones in the palms of his hands.

GIVING TERRORISTS A TRIAL BY JURY IN NEW YORK CITY

The SPEAKER pro tempore (Mr. SCHRADER). Under the Speaker's announced policy of January 6, 2009, the gentleman from Texas (Mr. GOHMERT) is recognized for 60 minutes.

Mr. GOHMERT. Thank you, Mr. Speaker.

I want to follow up on what my colleague from Texas was talking about, as the ranking member on the Homeland Security Subcommittee on Terrorism. And actually, I'm the ranking Republican member on the Crime, Terrorism, and Homeland Security Subcommittee under the Judiciary, so we have some overlapping space there.

I know my friends, the gentleman from Indiana (Mr. BURTON) and the gentleman from Texas (Mr. MCCAUL), in their hearts are very much concerned about the safety and the well-being of this country. This is some serious stuff that's going on here when the President of the United States says that we need to bring at least some of the most feared terrorists in the world into the most densely populated area in America.

Now, having been a judge and a chief justice, having had to work out logistics for major trials that had a lot of publicity, nothing, nothing like this trial will be—I understand perhaps some of the ramifications that our fine President, with his experience in community organizing, may not quite understand. You can't bring terrorists—and the reason I say "terrorists" instead of "alleged terrorists" is because they've admitted it. You can't bring them to the most densely populated area in our country and not expect there to be terror to follow. I mean, I've tried felony cases, death penalty

cases, and I know there are other friends here in Congress that have also. Death threats arise in those types of cases. I had them. I didn't worry about them when it was me. I worried about them when it was my family, and that happens.

If you think about the consequences logistically of bringing admitted terrorists to the most densely populated area in America, New York City, where they've already struck at least twice. They tried to blow up the World Trade Center. It didn't work the first time. They did some damage, but nothing like the second time, and we're going to bring them right back. We know, thank God, that most Muslims are not jihadists like you find here with Khalid Sheikh Mohammed.

But when you read the six-page pleading that Khalid Sheikh Mohammed, the guy that they want to bring to New York for trial, said in his own pleading—and as I understand it, he did his own interpretation to English. He would make statements, and he would back them up by a reference and a quote in English from the Koran. He says, "We ask to be near to God"—this Khalid Sheikh Mohammed, who our President is inviting to come to New York City. "We fight you and destroy you and terrorize you." Khalid Sheikh Mohammed said this in his pleading. And it wasn't just for him. It was on behalf of the other four defendants in this case.

But he says, "The jihad in God's cause is a great duty in our religion. We have news for you. The news is you will be greatly defeated in Afghanistan and Iraq, and America will fall politically, militarily, and economically. Your end is near, and your fall will be just as the fall of the towers on the blessed 9/11 day. We will raise from the ruins, God willing. We will leave this imprisonment with our noses raised high in dignity as the lion emerges from his den. We shall pass over the blades of the sword into the gates of heaven. We ask from God to accept our contributions to the great attack, the great attack on America, and to place our 19 martyred brethren among the highest peaks in paradise." Now, this is the guy we want to bring to New York.

Now, having logistically set up major cases for trial, I can tell you that you have jailers who are going to be responsible for these people in jail 24 hours a day. Those shifts change constantly. You will have to be very attentive not only to every single jailer, but to every single jailer's family, because these forces will look for weak links in the jailer and the jailer's family.

You will have bailiffs in the courts who will also be responsible for their safekeeping and security. The bailiffs and their families will have to be viewed as potential weak links to be utilized by the terrorists.

You'll have to think about the clerks who may be marshaling evidence. They and their families will have to worry about being targets.

You will have to think about potential jurors. Even though the names supposedly would be kept secret, you have to worry about them and their families.

And the judge, his name will not be kept secret. The judge and his family will be open targets the rest of their lives.

This is scary stuff from a President who knows how to community organize better than any President we've had, but I don't believe he knows the organizational efforts and the weaknesses that will be brought out.

I would yield to my friend from Arizona (Mr. SHADEGG).

Mr. SHADEGG. I appreciate the gentleman yielding.

I just want to say that I hope Americans are thinking through the various ramifications. I think you just made an excellent point. We are talking about trials of terrorists in civilian courts in the biggest city, or one of the biggest cities in the Nation.

You just made a brilliant point. What about the guards and their families, the court clerks and their families, the bailiffs and their families, and on and on and on, all of whom now will be exposed to perhaps pressure, kidnapping, threats.

But what about, how long will this take? Are these trials that can be concluded in weeks? No, I don't think so. You are a judge. Do you think these trials can be concluded in months? Or perhaps, as our colleague Mr. HOEKSTRA pointed out on Face the Nation yesterday, these are trials which, if the defense exploits them, as defense attorneys do in courts in America, could go on for months or years, ripping open the wounds of the people whose family members died in those attacks. Why? Why in God's name are we giving terrorists the protection of trials in American criminal justice courts? It is insane. It absolutely makes no sense.

I believe that we are exposing the people of New York, the people involved in these courts and the people involved in their security all for no reason whatsoever, and it won't just go on for a few days or a few weeks or a few months.

□ 2115

I would like to direct the attention of the listening audience to the points that were made in today's media. This is going to be a field day for al Qaeda to learn how America and the American system of intelligence gathers information, and they'll be able to drag it out in open public court rather than in a military tribunal.

Somebody explain to me—I wish somebody could explain to me—why terrorists deserve the protections of the U.S. Constitution as if they had broken civil laws while they're operating inside this country. Khalid Sheikh Mohammed was not in the United States when he planned this. This was not a simple murder. This was a terrorist attack by enemy combat-

ants. We may not want to call it war. We may not want to call it a war on terror. We may not want to accept the fact that there are people who hate us, as the quote the gentleman from Texas just read demonstrates; but it's reality. And we ought to be dealing with it as a terrorist threat in the tribunals set up for terrorist threats and for war crimes and crimes committed in the process of combat.

There was no mistaking, absolutely no mistaking, what al Qaeda wanted to accomplish by these attacks, and they were not done for mere criminal purposes. They were done to terrorize a Nation. And we have lost sight of that, and I think this administration has lost sight of it. I think this Attorney General is making a grave, grave mistake. And the damage we have seen in the past when our intelligence community is injured because this kind of information is made public and we are no longer able to operate as an intelligence community protecting a Nation against foreign enemies should act, I think, is a risk which we should never be undertaking under these circumstances.

I thank the gentleman for yielding. I know his years on the bench as a trial judge watching criminal trials makes it painfully clear that that's a procedure designed to protect defendants accused by the Nation of crimes under the laws and statutes of this Nation. That's not what we are dealing with here, and I thank the gentleman for making that point.

Mr. GOHMERT. I appreciate Mr. SHADEGG making the point he does about why would we bring them to trial here in the United States, especially in New York City.

There are a lot of people that have never picked up the Constitution. We've got a little pocket Constitution here. But in article I it talks about the legislative powers. Over in section 8 it says that "Congress shall have power to" and you go down to "constitute tribunals inferior to the Supreme Court." So President Bush made a mistake when he tried to create tribunals by the executive branch without getting Congress involved, and the Supreme Court rightfully struck that down and said you can't do that because article I, section 8 says this is something that Congress must do.

So then Congress did that. We had the Military Commissions Act of 2006, and this is the bill that's been slightly amended here this year, but it still says that, in section 948c, persons subject to military commissions: any alien unprivileged enemy belligerent is subject to trial by military commission as set forth in this chapter.

I am in the process of drafting this legislation right now that we will file this week that will say they must be tried in military commissions so we don't have an inexperienced President that doesn't realize the consequences of his actions.

Mr. MCCAUL. Will the gentleman yield?

Mr. GOHMERT. I yield to my friend Mr. McCAUL.

Mr. McCAUL. Are we not in a war on terror, in your view?

Mr. GOHMERT. Pardon?

Mr. McCAUL. Are we not in a war on terror?

Mr. GOHMERT. Some people don't want to call it that and it may be unilateral at this point, but there is a war using terror going on and we either fight it, or we will be overwhelmed by it. So we should be in it, yes.

Mr. McCAUL. My point is that that language has been taken out of the vernacular by this administration for whatever reason. We have our points as to why, but this is not being viewed as a war. What happened by the decision to bring in the mastermind of 9/11 to the very city where 3,000 Americans were murdered basically was a signal by this administration that the war on terror is over, that we are no longer going to treat terrorists as enemies of war; but, rather, we're going to go back to the Clinton administration years where we're going to treat them as criminal defendants, like Ramzi Yousef, the 1993 World Trade Center bomber, a criminal defendant. Not an act of war, but he is a criminal defendant.

By the way, Ramzi Yousef did not get the death penalty. And he went to talk to his Uncle Khalid Shiekh Mohammed about flying airplanes into buildings, and look what happened. Moussaoui did not get the death penalty because a lot of evidence was held to be inadmissible in a Federal court.

If they are true enemies of war, the best venue to try them is, as we did in World War II, by military tribunals. And the rules of evidence, as you know, Judge, I was a Federal prosecutor in the Justice Department, Southern District of New York, U.S. Attorney, one of the finest in the country. But the fact is you bring them on American soil, give them all rights under the Constitution, as my good friend from Arizona stated, why does Khalid Shiekh Mohammed get constitutional rights?

Mr. GOHMERT. Reclaiming my time, that is a very important point. Why does he get American citizens' rights? He has not been to America. He masterminded this. He was captured overseas in a foreign country. He's in Guantanamo right now, and the Constitution gives us in Congress the right to set up a military tribunal commission system, which we did.

But I want to come back and I'm going to keep injecting quotes from Khalid Shiekh Mohammed's own pleading himself. This is the guy who our President and Eric Holder, the Attorney General, want to bring to the most densely populated area in America. On page 4 he said, "In God's book he ordered us to fight you everywhere we find you, even if you were inside the holiest of all holy cities, the Mosque in Mecca and the holy city of Mecca even during sacred months." He said, "In

God's book," verse 9, Al-Tawbah, "then fight and slay the pagans wherever you find them and seize them and besiege them and lie in wait for them in each and every ambush." This is the guy they want to yield American citizens' rights to who will not be able to—

Mr. McCAUL. If the gentleman would yield, what was the first thing that Khalid Shiekh Mohammed said when he was apprehended in Islamabad? It was two things.

Mr. GOHMERT. Take me to New York.

Mr. McCAUL. One, I want an attorney, and, number two, Take me to New York. And you know what? President Obama and this administration gave him his wish.

I just want to end my comments by saying you and I have tried cases. This is going to be a circus, a show trial of the maximum. The motions to transfer venue, the motions to suppress the evidence, none of the information we got from Khalid Shiekh Mohammed using water-boarding, which has protected American lives, which, by the way, this administration wants to investigate and put those CIA and intelligence people in jail. The discovery alone, as the gentleman from Arizona stated, will keep this thing alive for years to come, will involve classified information that will not be properly protected as it would in the military court.

Finally, on the security issue, I think the gentleman from Texas is right: this will become a Mecca for the terrorists, not only to al Qaeda but homegrown, radicalized homegrown, whether Mr. Moussaoui is homegrown, radicalized, or not, people like him will come to New York to blow buildings up and to prey on the jury perhaps or the judges.

Mr. SHADEGG. If the gentleman will yield, I think it's fascinating that we all stand here, all three of us, with backgrounds in prosecution. The gentleman was a Federal prosecutor. I was in the Arizona Attorney General's Office for many years and involved in the prosecutions of a number of cases. You sat on the bench. All three of us come here instinctively tonight because we are so repulsed by the notion that American criminal courts intended to provide a plethora of rights to Americans accused of crimes inside this country are being afforded to someone who is clearly a terrorist, who clearly plotted from outside this country, who clearly plotted acts of war, and who said, as the gentleman just pointed out, as soon as he was apprehended outside the country, I want an attorney and I want to go to New York. And this administration is going to give him both of those wishes? That's an outrage.

I want to explore the point that my colleague Mr. GOHMERT made earlier. This is supposed to be a Nation of laws. Laws that anticipate that crimes committed by war criminals, enemy combatants, terrorists seeking to attack this Nation and all it stands for, they weren't seeking to attack a random

group of people on an airplane or in a building. They wanted to attack this Nation. The law says how that should be dealt with. It's supposed to be dealt with when those terrorists, those war criminals are apprehended, as Khalid Shiekh Mohammed was. They are supposed to be tried in tribunals. You just read us the law.

How does Mr. Holder, how does President Obama get around the law? And do not the people of America have the right to demand that the law be followed and that these individuals be charged and tried in tribunals held by the military because they are war criminals? They are not civilians and they are not U.S. citizens and they are not afforded the protections of the criminal courts of the United States.

Mr. McCAUL. If the gentleman would yield, this was clearly evident early in this administration under their global justice policy that no longer would apprehended terrorists captured on the battlefield be treated as enemies of war.

Mr. SHADEGG. So we're going to read them their Miranda rights? We're going to provide lawyers to them out on the battlefield?

Mr. McCAUL. Precisely. And what came out in a shocking story that has not been told enough, in my view, was that FBI agents were there at the detention facilities reading them the Miranda rights. This is where this administration has shifted towards treating them as criminal defendants in Afghanistan, with full rights of the U.S. Constitution in Afghanistan. And I believe it is a sad day for America when we bring this mastermind of 9/11 to the very city where he killed 3,000 Americans.

Mr. GOHMERT. Reclaiming my time briefly, the gentleman from Arizona asked how do they get around the law. Under section 948h of the Military Commissions Act of 2006, it says the "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." So the Secretary of the Defense serves at the pleasure of the President. And that "may" word allows them not to convene, which brings them to court.

Mr. SHADEGG. Will the gentleman yield?

Mr. GOHMERT. Yes.

Mr. SHADEGG. So the Secretary of Defense may choose, pressured by the President, not to convene a tribunal. How then does that give the President of the United States the right to bring them to the United States and to try them in a criminal court? Because they did not violate a civilian law of the United States. I submit they committed acts of war. Does he have the power to overrule the law and bring them here and say they are something they are not, say they are not terrorists when their conduct constituted an act of terror? Or is he simply then obligated to hold them if they don't conduct a military tribunal?

Mr. GOHMERT. The gentleman raises a very good question. The problem has been apparently that the Attorney General and the President don't want to charge them with what they've actually done, committed an act of war against this Nation. They want to charge them with a criminal violation and bring that to court. And if they do not charge them with the act of war that brought about the deaths of thousands of Americans, innocent Americans of all walks of life, if they don't want to charge them with the most heinous act of war against this country in our history, and charge them simply with a criminal violation, then they can bring them into the civilians courts.

Mr. SHADEGG. Let will the gentleman yield?

Mr. GOHMERT. Yes.

Mr. SHADEGG. Does that then raise the issue of whether their refusal to charge them with the conduct they, in fact, engaged in, which I would argue was clearly an act of war, clearly an act of terrorism against the Nation, if the officials charged with the duty of charging them with that conduct, acts of war against the United States, acts of terrorism against the United States, the Secretary of the Army, the Attorney General, or the President of the United States, are they not then derelict in their duty and are they not then subject to being either punished by the Congress or removed from office for failing to do their duty to charge Khalid Shiekh Mohammed with the conduct he engaged in, which was an act of war against the United States?

□ 2130

Mr. GOHMERT. Well, that's another good question. But as far as a—I think there is a breach of a fiduciary duty when you're more concerned about your image among foreign countries than you are with the safety of individuals in New York City, it would seem to be a breach of the fiduciary duty to protect Americans.

Mr. SHADEGG. If the gentleman will yield, I'll let him make his point.

Mr. GOHMERT. Well, let me inject one more comment by Khalid Sheikh Mohammed, because I'm going to keep on injecting his own words from his own pleading. We do not—this is Khalid Sheikh Mohammed—we do not possess your military might, not your nuclear weapons, not yet; nevertheless, we fight you with the Almighty God. So if our act of jihad and our fighting with you cause fear and terror, then many thanks to God, because it is Him that has thrown fear into your hearts which resulted in your infidelity, paganism and your statement that God had a son and your trinity beliefs. That's for Christians. He also says, in God's book, He ordered us to fight you everywhere we find you. Oh I've already read that one. But he quotes from the Koran and says, soon shall we cast terror into the hearts of the unbeliever for that they join companies with Allah for which he

has sent no authority. Their place will be in the fire, and the evil is the home of the wrongdoers.

This is the guy we're going to bring to New York City. I yield to my friend.

Mr. MCCAUL. And you're going to bring him into New York. And Osama Bin Laden, in the late 1990s, declared war against the United States. He actually declared war against the United States.

Mr. SHADEGG. And if the gentleman would yield, and he took credit for this act, and said it was a part of that war against the United States. How in God's name could Khalid Sheikh Mohammed not be at least charged and tried with an act of terrorism against the United States which, under current law, if we are in fact a Nation of laws, must be tried in a military tribunal? This country, the American people, get it. They see that in the name of political correctness we are placing an imprimatur on these acts that they were not acts of war, and that is not what the American people believe. We will rue the day, we will as a Nation, rue the day that we treat our enemies as criminals and not as enemy combatants who commit war against us.

Mr. GOHMERT. Well, there is a key issue my friend raises. We treat them as criminals instead of as war terrorists and war criminals, because this won't just put New Yorkers at risk. It will not. It will put our soldiers at risk.

Mr. SHADEGG. Absolutely.

Mr. GOHMERT. I mean, having tried so many criminal cases, I can tell you, you know, the best thing they do is roll in, they've got photographers, they've got people with the rubber gloves, they take—the latex gloves—they take DNA evidence, they take fingerprints, they do all of this forensic analysis of the scene as my friends both know because they've used that evidence. Our soldiers cannot afford to bring out a forensic wagon in the middle of a battlefield to check for DNA, to check for fingerprints, to establish a chain of custody. And both of my friends know, if you don't have the chain of custody on a piece of evidence, it's not coming in. It's one of the reasons you don't charge war criminals as criminals in a civilian court because our soldiers should not be put in harm's way trying to gather that kind of forensic evidence.

Mr. SHADEGG. Every father and every mother and every sister and every brother of a soldier of this Nation needs to be scared because this undercuts our troops. This damages their morale. This undercuts their ability to do their job. This is a betrayal of America's fighting women and America's fighting men, and we need to stand up and we need to speak out and we need to say it's wrong. And it's not just unsafe for the people of New York. It's not just unsafe for the people of Illinois. It's not just unsafe for the people of Texas or Arizona. It is unsafe for every soldier we have engaged in combat. It is a betrayal of them in the name of political correctness.

Mr. MCCAUL. Political correctness. And when has the Constitution of the United States been applied to enemies who are captured on the battlefield outside of the United States? I don't think that's ever been done. I'm not sure if that has ever been done.

Mr. SHADEGG. I would doubt it has ever happened.

Mr. MCCAUL. And this administration again wants to take the vernacular war on terror, they want to just erase the last, you know, 4, 8 years. No, it was never a war. These are just criminal cases that need to be prosecuted and we need to treat them that way.

Mr. SHADEGG. I think the gentleman brings up a great point of history, and I want to add to it. Do you know that in World War II, enemy combatants caught in the United States, and there were some who came into the United States, came ashore or came to our coasts in submarines, then came ashore, could not, under international law, be held in American civilian prisons. The reason for that is they are not, as of that point in time, they're not criminals, and they have not been convicted, and therefore cannot be punished as prisoners in American jails or prisons are being punished.

And so we had to create camps where you could hold prisoners of war. As it turned out, we didn't adjudicate most of them. We released them upon the end of combat. In this case we are actually doing the opposite. We are not just saying that they're not enemy combatants engaged in acts of war and treating them separately and treating them as our colleague from Texas, Mr. GOHMERT, points out, through military tribunals. We're mixing them into the American criminal justice system, a system designed to preserve and protect the rights of the American people. It's insane. And the consequences will mean that, by extension, we have to go into the battlefield with evidence testing and with defense counsels and, as my colleague from Texas pointed out, the notion that we have to read them their rights. This is lunacy and a betrayal of our military.

Mr. MCCAUL. As the gentleman knows if he will yield, a criminal defense lawyer in a civilian court is going to use discovery at every opportunity to embarrass the United States of America and to blame America first for the acts of a terrorist, Khalid Sheikh Mohammed. And what concerns me the most is that they're going to make a mockery of our criminal justice system here in the United States and use it as a propaganda weapon in what I still refer to as this war on terror. This was one of the biggest mistakes this President has made. The decision to close Guantanamo Bay—I saw Khalid Sheikh Mohammed down in Guantanamo; it was one of the most chilling things I've ever seen, as he prayed, bowed over his prayer rug, to Mecca. We haven't broken his spirit.

And this administration again just granted him his wish. He gets his lawyer now, and he gets to come to New York City, just like his nephew, Ramsay Yusef did, who, by the way, did not get the death penalty. And as I close, as I move on, I sincerely hope that—this was a huge mistake—but I sincerely hope that this man is given the ultimate punishment so he can—not only here on earth but move on to the next world.

Mr. GOHMERT. And the gentleman makes a great point also, that he is not remorseful at all and, in fact, here he has been in prison, and this is filed this year, that Khalid Sheikh Mohammed says, and this is from his pleading that he himself prepared, so our religion is a religion of fear and terror to the enemies of God, the Jews, the Christians and pagans. With God willing, we are terrorists to the bone. So many thanks to God. He went on to say, and he quotes the Arab poet that stated, we will terrorize you as long as we live, with swords, fire and airplanes.

It's unbelievable that you would bring a guy like this into the United States of America, put our soldiers at risk for the future, forcing them to try to gather forensic evidence. While people are shooting at them they're going to have to be worried about fingerprints and DNA evidence and gee, did they have witnesses, getting witnesses' names and addresses, locations so they can come back and perhaps bring them to court in New York some day to testify. We just don't do this. We can't afford to do this when people are at war.

Our President, this administration may not realize we're at war, but there are people at war with us, and we fail to respond at our own risk. This is scary stuff. And we have the Military Commission Act of 2006. We're working on language that will make it a requirement so that it is not an option for the President. I mentioned article 1, section 8 that gives power to Congress to constitute tribunals inferior to the Supreme Court. As a constitutional law professor mentioned this weekend to me as I was visiting with him about this issue. He said, you know, the Supreme Court is really the only court in the country that has a right to exist under the Constitution. Every other court, tribunal, commission, only has their existence at the will of Congress.

And article 3 and section 1 makes that clear: The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish. Going over, and it says, even the Supreme Court, it talks about all cases affecting ambassadors, other public ministers and consuls and those in which the State shall be party, the Supreme Court shall have original jurisdiction. In the other cases before mentioned the Supreme Court shall have appellate jurisdiction both as to law, in fact, with such exceptions and under such regulations as the Congress shall make.

We have an obligation in this Congress to rein in a President that is putting New York City, our soldiers, our military at risk, and we fail to do so at the risk of those we are elected to serve and protect from all enemies, foreign and domestic. I yield to my friend from Arizona.

Mr. SHADEGG. I appreciate the gentleman for yielding. I think it's important to note that from the outset there have been some in this body who have tried to stop this moment from occurring. I introduced legislation as soon as I heard that the President intended to bring detainees from Guantanamo Bay to the United States and to close Guantanamo Bay. I introduced legislation back last February to prohibit the President from bringing a single person who had ever been detained at Guantanamo Bay here to the United States. Mine was one of many bills introduced by Republican Members of Congress to try to stop this very point.

Mr. GOHMERT. If the gentleman would yield, that was a good bill he filed as well, and I appreciate the efforts in doing that.

Mr. SHADEGG. Our minority leader, Mr. BOEHNER, introduced a bill identical or very similar to mine. There have been other pieces of legislation. I just want to make it clear that I think that this is a grave error on so many fronts it's hard to explain. And it's worth maybe trying to lay out some of those points for anybody who'd just listen. Number one, I think the gentleman made a good point of this earlier. If you bring terrorists to the United States, there is, first and foremost, the danger that by merely being physically present in the United States, they will acquire rights that they do not have in Guantanamo Bay, that they do not have in Iraq, or that they did not have in Afghanistan.

Mr. GOHMERT. And I will add that no prisoner of war, no enemy combatant has ever had in the whole history of the world and of mankind.

Mr. SHADEGG. And why are we changing it? For some sense of political correctness, because we doubt ourselves, because we doubt that we were attacked, because we doubt the sincerity of the insane comments you've just read from Khalid Sheikh Mohammed about his intention to kill us, about his bragging, I believe, of beheading Daniel Pearl himself?

Those are shocking things. But that's just like the first of many reasons why this is a terrible policy. The gentleman did, I think, an excellent job earlier, that maybe the average American doesn't think about. But think of the risk that you are imposing upon not just the sworn police officers who will transport the combatants brought here, and the jailers that will jail them and the judges that will preside and the clerks that will be in the room or the bailiffs, but think of every single one of their family members, not just their children, their wives; what about their brothers, their sisters, their cousins,

their aunts, all of whom now become targets of terrorism, because if I were a terrorist outside of United States and Khalid Sheikh Mohammed was going on trial in New York, I'd say, why don't I find the judge's cousin? Why don't I find the judge's sister? Why don't I find the jailer's brother? And I'll capture them and hold them for ransom until Khalid Sheikh Mohammed is released.

We are placing literally, a countless number of Americans, guards, bailiffs, clerks, judges, jury members, and all their families at risk to afford to avowed terrorists who say the insane hatred things that you just read? We are putting all of them at risk to afford to Khalid Sheikh Mohammed the rights that our Constitution reserves to Americans accused of, Americans simply accused of criminal acts in America? These were not criminal acts in America. This was an act of war.

□ 2145

As our colleague from Texas pointed out earlier, he made no mistake. When Osama bin Laden declared war against the United States, it was not, "I plan to go rob the United States." It was not, "I plan to go kidnap Americans in the United States and hold them for ransom." It was, "I am declaring war against the United States." And here we sit compliant in this process because we want to be politically correct; we want to be perceived as fair.

What did we establish that was unfair about Guantanamo? Soldiers there have been given copies of the Koran. They've been given prayer mats. They are allowed time of prayer. We have spent \$50 million or more in building and improving that facility.

This is the first time in the course of the history of this Nation that we have doubted ourselves so much as to say we can't deal with enemy combatants who launch a war against us as we have dealt with them throughout history; throughout World War I, World War II, Korea, Vietnam. The tradition, the standards, the equity, the justice of the American military tribunal process has been established. And now, for the sake of political correctness, because somebody is unhappy, maybe somebody who is not a friend of the United States, maybe somebody who is not an ally of the United States, maybe somebody who wants to destroy this Nation, says, "We don't like your system," so we are going to put them into the American criminal justice system? It makes no sense.

If he had been born here, if he had been a domestic terrorist who had begun his activities here, maybe that could be debated, but that is not the case. Not born here, not a U.S. citizen, not here when the crimes were committed, plotted from overseas as an act of war under the command of Osama bin Laden—a man who had already declared war on the United States—and both of them part of an entity, al

Qaeda, an entity that, as an institution, declared war against the United States

We have to stand our ground. This is the time, America, to say enough is enough. We are not going to expose America's citizens—all of those judges, all of those clerks, all of those bailiffs, all of those jailers, all of those police officers who have to transport somebody. And it's easy for them to say, "We are tough." I saw the mayor of New York say, "We are tough. We can do it."

Well, Mayor, how are you going to feel when it is your daughter that is kidnapped at school by a terrorist? How are you going to feel when it is some clerk, some innocent clerk of the court whose daughter or son is kidnapped or the judge's wife or the jailer's little brother or little sister?

This is political correctness run amok.

Mr. GOHMERT. Nothing illustrates my friend's point better than Khalid Sheikh Mohammed's own words on page 6 of his own pleadings where he says, "We fight you and destroy you and terrorize you." He goes on to say, "So we ask from God to accept our contributions to the great attack, the great attack on America." Those are not words of a conspiracy to commit a crime. Those are admissions of participation and an act of war.

I want to direct attention to New York City where I am sure the leaders like Khalid Sheikh Mohammed that are still loose are already planning. Think about the logistics in New York City. Well, you could provide a safe environment like we have in Guantanamo if you closed all of the tunnels, if you closed all of the bridges, if you closed the area around the court and the area around where these terrorists, these enemy combatants, are being held. You close that area off. Failure to do any of those opens the easy possibility of one car or several cars being filled with explosives and driving near an area and blowing up.

Now, you also have to stop the subways that are running underneath all of these areas. There is no easy way. There is just no way to safeguard the people of New York City.

And my friend brings up the kidnapping of family members of participants in the case, but then there is the also the problem of those who are threatened to be kidnapped.

Now, when you have a big trial, normally it's not uncommon to have bomb threats called in. How many bomb threats do you think will be called in during the course of this trial?

Mr. SHADEGG. If the gentleman will yield on that point, I guess in order to figure out how long you'd have to close the subways and how long you'd have to close the bridges and how many bomb threats will be called in during the course of the trial, you'd have to begin by saying, well, how long will the trial last? And that is a pretty interesting question.

In America, if we have a true criminal trial in a multiple murder case, those can last weeks, months, years. I don't know what the longest criminal trial in American history is, but I guarantee you, it is a lot more than a month or two. And then when you add appeals, I presume Khalid Sheikh Mohammed, as Eric Holder envisions and as Barack Obama envisions, is going to get to have appeals. Maybe he'll get to have interlocutory appeals of rulings by the judge which could deny him his now, I guess, constitutionally guaranteed rights, the rights we cherish as citizens of the United States which we've now decided to extend to an avowed terrorist.

I want to suggest that our colleague from Michigan (Mr. HOEKSTRA) was correct yesterday morning on Face the Nation when he pointed out that this could turn into a legal circus that goes on for not days, not weeks, not months, but years when you count Khalid Sheikh Mohammed and all of the others that I guess Eric Holder wants to bring here one after another and try in the courts of the United States as if they were criminals.

I am plagued by a question as I stand here. I cannot cite to you—and I challenge someone to let us know—what it is about the criminal—about the military tribunal process that is not adequate. Did Attorney General Holder announce that there was some flaw in the military tribunal process that could not be remedied? Did the American Civil Liberties Union, have they come forward and said there is a flaw in the tribunal process, because I didn't hear it. It was good enough for prisoners of war during World War I. It was good enough for prisoners of war during World War II. It was good enough, I presume, for prisoners of war in Korea and Vietnam. How is it now that it's not good enough? Why are we doing this?

Does the gentleman know?

Mr. GOHMERT. All I can think of is you have an administration that is willing to bow both personally and as a Nation before other nations, bowing our security, our safety in ways that have never been done before.

Mr. SHADEGG. Are those nations changing their military tribunal processes?

Mr. GOHMERT. There is no one who has ever granted an American citizen the kind of rights that are being afforded—and I am sure my friend has been to Guantanamo, as I have, and, in fact, as you get down there, they utilize brilliant legal minds in conjunction with wonderful engineering minds to create a terrific courtroom setting with security. There is a bulletproof glass between the gallery and where the trial will take place. There are areas where people can consult, defendants can consult with their attorneys and that are completely secure. They don't have to worry about privacy issues or being bugged because of the austerity of those facilities. It is very

well thought out. It is very difficult to get there. You couldn't get an attack into that area. You couldn't have a terrorist activity take place that would threaten that facility, it was so well thought out.

Oh, and by the way, with regard to Guantanamo, my friend raised this. The prayer rugs, the arrows pointing which way to Mecca, the Korans that are provided in safekeeping—and as we know it was not a guard that tried to flush a Koran. That was not the case. But I asked our own Sam Johnson, who is in this body, who was a POW in Hanoi, if anybody provided him prayer books or prayer rugs or gave him a chance to pray.

Mr. SHADEGG. I think he liked the Bible, if I know Sam Johnson.

Mr. GOHMERT. Sam said there were no Bibles provided, but they did give them the chance to drop to their knees. They would put a rod across the floor where, when they were beat in the back and dropped to their knees, their knees would hit on the rod and then they were forced to stay with their knees on that rod. And he said, It may not sound like much, but over a period of hours, it becomes so excruciatingly painful that it's just unbearable and you hope and pray you will pass out. That is what has been afforded to Americans before. And we have seen what happened to Daniel Pearl.

They say, well, gee, they may treat ours more harshly if we don't bring them to a criminal trial in New York. How much more harshly do you treat somebody than cutting their heads off while they are gurgling and trying to beg for help? I don't think that is a problem.

We need to treat these people as the war criminals that they are, that they have admitted to be; otherwise, we put our Nation at great risk.

Mr. SHADEGG. I think the gentleman says it right. I appreciate the opportunity to be here on the floor and chat with him.

I happen to be from Arizona. I happen to be from the home State of JOHN MCCAIN. I happen to believe that there is, in fact, a duty to treat war criminals within the bounds of international law. I believe that they should not be beaten, they should not be tortured. I believe they should be afforded those standards that are accorded to those accused of war crimes through history. I personally believe they can be held without trial as long as the war goes on, and I believe this war is going on.

We, as a Nation, can be in denial as long as we want. We can cleanse from our vernacular every term that the administration finds offensive. Janet Napolitano can say we are no longer going to call it a war on terror. We are no longer going to deal with radical Islam or Islamists or jihadists. We are going to pretend that all goes away. In my life experience, you cannot pretend and, by pretending, change reality.

There are those who hate us. There are those around the world who hate

us. There are those like Khalid Sheikh Mohammed, whose works you just read, who despise us and who desire to kill us. If we do not deal with them fairly, but also according to law, then we've betrayed the tradition of this Nation.

Never ever, in the history of this Nation, have we taken war criminals, people who have committed acts of terrorism under the auspices of an organization—here, al Qaeda—led by a leader—here, Osama bin Laden—that has declared war formally and in writing against the United States and said somebody acting on behalf of that organization, having as an organization declared war against the United States, having engaged then in acts of war, shall be tried in American criminal courts designed to deal with criminals who commit common crimes against other citizens of this Nation. This is a betrayal of our soldiers, and it puts our Nation and puts our soldiers at grave risk.

I believe Attorney General Holder will rue the day they made this decision and rue the day when someone is captured or killed in New York or held hostage as a result of this irresponsible conduct. And even if that doesn't happen, it, alone, is a betrayal of the system we have followed since the founding of this Nation where those accused of war crimes are tried in military tribunals.

Mr. GOHMERT. I appreciate so much my friend's wonderful points.

We understand the President just recently, because of the lack of understanding of our military history and the Nation's history, is perhaps apparently the first President ever to fail to understand and believe that President Truman did the right thing in dropping the two bombs that they did.

And so if you are an apologist for America, you believe that consistently we have done the wrong things, you have never been really proud of America before, you don't know that the Japanese had committed to dig in and had planned to withstand an assault even to the death of every single Japanese person on the island of Japan.

□ 2200

If you don't know these facts, if you don't know the fact that perhaps millions of lives were saved by dropping those two bombs because it brought the war to an end rather than forcing the Japanese, as their leaders intended to do, to die to the last person to repel an invasion, then you would be an apologist, if you simply don't know the facts. But this puts us further at risk. We just simply cannot bow to this.

The answer will be when the American people respond and let the White House know and let the Department of Justice know. Burn up the phone lines. Let them know by constant calls. I'm not sure I would email this White House since they have shown what they do with the list. But at least burn up the phone lines letting them know that

the Commander in Chief needs to act as a Commander in Chief, and not an apologist in chief and that we should not put our soldiers at further risk by requiring them to gather forensic evidence, that we should not put the people of New York at further risk, and to leave them at Guantanamo to be tried there.

People who understand about war understand that in the whole history of mankind, the precedent is if you as a group declare war on another nation and you or your fellow warriors are captured, then you are held until such time as your fellow group will cease the war, whether it takes years, a 100-year war, a 7-year war, whatever it takes until you convince your people to quit being at war with us, then we hold you until the war is over, and then bring you to trial. That's what the precedent normally is. Whether it's 4 years as World War II, whatever the length of time, we hold you until your people are no longer at war with us as a Nation.

In this case, if you want to rush them, bring them to trial, fine. Do it with a military commission set up under the Military Commissions Act of 2006. We are going to try to amend it so that the President has no choice, so that this President learns you do not have the choice to put New Yorkers at risk.

It breaks my heart to think about the families of those victims of 9/11 and what they will be subjected to. As a judge, I saw the faces of family members who struggled with the aspect of going through and reliving the trauma of the terrible crime that was committed against them. I saw those faces. I heard their great suffering. I'm afraid it's not going to be nearly what that will be collectively of a city the size of New York as they have to relive 9/11 on the island. They have to relive the possibility of further terrorist attacks.

Certainly terrorist attacks will be threatened during the course of the trial. And, of course, you would expect the defense attorneys to wait until Khalid Sheikh Mohammed and these other terrorists have actually put their feet on American soil so they will be granted all the rights of an American citizen such as they were trying to kill as many of as they could. You wait until their feet are on American soil, and then you file your motion to change venue, then you file your motion for discovery, then you file your motions to examine experts and drag those things out as long as you can.

I ended up being asked to take over a civil trial in Texas that several judges had worked on prior to me. It was outside my district. But every judge had been recused for one reason or another. It had gone on for 11 years. I was asked to take it over, and it had been a logistical nightmare. And I was deemed to have done an amazing job in wrapping the case up in 2 years when both parties said when I got into it that they wouldn't bring a case to trial for perhaps 5 years.

But even working as quickly as I did and being as forceful as I was as the judge, not taking any extensions, not granting any type of continuances, forcing everything as quickly as could be done, and yet legally, it still took 2 years to wrap that thing up. And that was considered amazing.

With what is at stake here, the City of New York should suffer no more. No more. I went to New York shortly after 9/11. I saw the suffering. We should not do that to New Yorkers again. My goodness, they have suffered enough.

Having spent 4 years in the Army, being familiar with the military justice system, it isn't a slam dunk for anybody under the UCMJ. There are rights afforded individuals who are tried under the UCMJ. But that is the appropriate place to try people like Khalid Sheikh Mohammed who says "We are terrorists to the bone. So many thanks to God." We can also be thankful to God that all Muslims, in fact, the vast majority, do not feel as Khalid Sheikh Mohammed.

This man does not need to set foot on American soil. We need to have a President that starts acting like a Commander in Chief, not an apologist in chief, so that we can keep America as safe as we have been for the last 8 years and not as the terror will be reintroduced by the reintroduction of these masterminds in America.

With that, Mr. Speaker, I realize my time is now expired, and I would conclude.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Ms. GIFFORDS (at the request of Mr. HOYER) for today on account of illness.

Mr. HEINRICH (at the request of Mr. HOYER) for today.

Ms. KILPATRICK of Michigan (at the request of Mr. HOYER) for today on account of personal business.

Mr. SKELTON (at the request of Mr. HOYER) for today on account of a codel.

Mr. TANNER (at the request of Mr. HOYER) for today and November 17 on account of presiding over the NATO Parliamentary Assembly's Fall Plenary Session.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Ms. WOOLSEY) to revise and extend their remarks and include extraneous material:)

Ms. WOOLSEY, for 5 minutes, today.

Mr. GRIFFITH, for 5 minutes, today.

Mr. DEFazio, for 5 minutes, today.

Ms. KAPTUR, for 5 minutes, today.

(The following Members (at the request of Mr. BURTON of Indiana) to revise and extend their remarks and include extraneous material:)

Mr. POE of Texas, for 5 minutes, today, November 17, 18, 19 and 20.