the property owner from moving forward their federal takings claim decided in Federal Court without first pursuing the case in state court.

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

The bill also clarifies that constitutes a "final decision" on an acceptable land use from a regulatory agency for purposes of being able to take the claim to federal court. Some regulatory agencies have avoided making such "final decisions" in order to prevent the property owner from moving forward with the property rights claim.

H.R. 4772 is a good bill that will protect America’s property rights.

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

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

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

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

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

I urge my colleagues to vote "no."

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

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

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

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

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

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

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

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

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

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

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

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

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

The yeas and nays were ordered.

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

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

MILITARY COMMISSIONS ACT OF 2006
Mr. SENSENBRUNNER. Mr. Speaker, pursuant to House Resolution 1054, I call up the Senate bill (S. 3930) to authorize trial by military commission for violations of the law of war, and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The text of the Senate bill is as follows:

S. 3930
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.
(a) SHORT TITLE.—This Act may be cited as the “Military Commissions Act of 2006”.
(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Construction of Presidential authority to establish military commissions.
Sec. 3. Military commissions.
Sec. 4. Amendments to Uniform Code of Military Justice.
Sec. 5. Treaty obligations not establishing grounds for certain claims.
Sec. 6. Implementation of treaty obligations.
Sec. 7. Habeas corpus matters.
Sec. 8. Revisions to Detainee Treatment Act of 2005 relating to protection of certain United States Government personnel.
Sec. 9. Review of judgments of military commissions.
Sec. 10. Detention covered by review of decisions of Combatant Status Review Tribunals of propriety of detention.

SEC. 2. CONSTRUCTION OF PRESIDENTIAL AUTHORITY TO ESTABLISH MILITARY COMMISSIONS.
The authority to establish military commissions under chapter 47A of title 10, United States Code, as added by section 3(a), may not be construed to alter or limit the authority of the President under the Constitution of the United States and laws of the United States to establish military commissions for areas declared to be under martial law or in occupied territories should circumstances so require.
SEC. 3. MILITARY COMMISSIONS.

(a) MILITARY COMMISSIONS.—

(1) In general.—Subtitle A of title 10, United States Code, is amended by inserting after section 947h of the Act (to which reference is made in the following new section):—

"CHAPTER 47A—MILITARY COMMISSIONS—

"Subchapter I—General Provisions—

"§ 948a. Definitions—

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

(b) QUALIFICATIONS.—A military judge shall be a commissioned officer of the armed forces who is a member of a bar of a Federal court, or a member of the bar of the highest court of a State, and who is certified to be a judge (as that term is defined) by the Judge Advocate General of the armed force of which such military judge is a member.

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

(d) CONSULTATION WITH MEMBERS; INELIGIBILITY TO VOTE.—A military judge detailed to a military commission under this chapter may not consult with the members of the commission or be present when the accuser or witness, or a person who has acted as investigator, investigator, or counsel in the same cause, is proceeding or has acted as investigator or counsel in the case.

(e) OTHER DUTIES.—A commissioned officer who is certified to be qualified for duty as a military judge under section 949q of this title (article 26 of the Uniform Code of Military Justice) as a military judge in general courts-martial by the Judge Advocate General of the armed force of which such military judge is a member.

(f) MILITARY JUSTICE.—Subject to subsection (c), military defense counsel detailed to a case of a military commission under this chapter must be a judge advocate (as so defined) who—

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

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

§948. Approval of the Judge Advocate General of a military commission which relates to his military commission under this chapter shall not prepare or review any evidence; and associate defense counsel may be de- signed to serve as the legal advisors for the defense before a military commission under this chapter.

§948k. Detail of trial counsel and defense counsel

(a) DETAIL OF COUNSEL GENERALLY.—(1) Trial counsel and military defense counsel shall be detailed for each military commission under this chapter. The convening authority of a military commission under this chapter shall not prepare or review any report concerning the effectiveness, fitness, or efficiency of a military judge detailed to the military commission which relates to his performance of duty as a military judge on the military commission.

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

(c) Military defense counsel for a military commission under this chapter shall be detailed as soon as practicable after the swearing-in of the accused.

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

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

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

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

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

(2) a civilian who—

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

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

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

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

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

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

§948m. Ineligibility of certain individuals

(a) CHARGES AND SPECIFICATIONS.—Charges and specifications against an accused before a military commission under this chapter shall be signed by a person subject to subsection (c)(1).

(b) DEFENSE TREATMENT ACT OF 2005.—In general, such an individual shall be present when the accused is present, and the commission shall record all proceedings.

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

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

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

(d) STATEMENTS OBTAINED AFTER ENACTMENT OF DEFEND TREATMENT ACT OF 2005.—A statement obtained on or after December 30, 2005 (the date of the enactment of the Defense Treatment Act of 2005) in which the degree of coercion is disputed is not admissible in a military commission under this chapter except in the presence of the accused.

(e) EXCLUSION OF STATEMENTS OBTAINED BY TORTURE.—A statement obtained by use of torture shall not be admissible in a military commission under this chapter except in the presence of the accused.

(f) EXCLUSION OF STATEMENTS OBTAINED BY DEGRADING TREATMENT.—A statement obtained by use of degrading treatment shall not be admissible in a military commission under this chapter except in the presence of the accused.

(g) EXCLUSION OF STATEMENTS OBTAINED BY CRUEL TREATMENT.—A statement obtained by use of cruel treatment shall not be admissible in a military commission under this chapter except in the presence of the accused.

(h) EXCLUSION OF STATEMENTS OBTAINED BY DEGRADING TREATMENT.—A statement obtained by use of degrading treatment shall not be admissible in a military commission under this chapter except in the presence of the accused.
§ 949c. Duties of trial counsel and defense counsel

(a) TRIAL COUNSEL.—The trial counsel of a military commission under this chapter shall procure for the accused the name of any other exercise of its or his functions in the conduct of the proceedings.

(b) DEFENSE COUNSEL.—The accused may be represented by civilian counsel if retained by the accused, but only if such civilian counsel—

(c) is a United States citizen;

(d) is a United States citizen;

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

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

(g) is a United States citizen.

§ 949d. Sessions.

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

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

(c) the action of any military commission under this chapter, or any member thereof, in reaching the findings or sentence in any case.

§ 949e. Record of trial.

(a) In General.—The accused shall be represented in his defense before a military commission under this chapter, and shall have the following:

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

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

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

(3) The accused shall receive the assistance of counsel as provided for by section 948k of this title.

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

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

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

(B) Except as provided in clause (ii), hearsay evidence that is otherwise inadmissible under the rules of evidence applicable in trial by general courts-martial may be admitted in a trial by military commission if the proponent of the evidence demonstrates to the adversary party, sufficiently in advance to provide the adverse party with a fair opportunity to meet the evidence, the intention of the proponent to offer the evidence, and the particulars of the evidence (including information on the general circumstances under which the evidence was obtained). The disclosure of evidence under the preceding sentence is subject to the requirements and limitations applicable to the disclosure of classified information in section 949o(b).

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

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

(i) the military judge of the military commission, or with respect to the findings or sentence adjudged by the military commission.

§ 949f. Unauthorized influencing action of military commission.

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

(b) the action of any military commission under this chapter, or any member thereof, in reaching the findings or sentence in any case.

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

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

(e) A general instructional or information course in military justice. If such courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of military commissions; or

(f) the action of any military judge or counsel.

§ 949g. Opportunity to obtain witnesses and other evidence.

(a) In General.—(1) No authority convening a military commission under this chapter shall procure for the accused the name of any other exercise of its or his functions in the conduct of the proceedings.

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

(c) the action of any military commission under this chapter, or any member thereof, in reaching the findings or sentence in any case.

§ 949h. Former jeopardy.

(a) In General.—(1) No authority convening a military commission under this chapter shall procure for the accused the name of any other exercise of its or his functions in the conduct of the proceedings.

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

(c) the action of any military commission under this chapter, or any member thereof, in reaching the findings or sentence in any case.

§ 949i. Voting and rulings.

(a) In General.—(1) No authority convening a military commission under this chapter shall procure for the accused the name of any other exercise of its or his functions in the conduct of the proceedings.

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

(c) the action of any military commission under this chapter, or any member thereof, in reaching the findings or sentence in any case.

§ 949j. Former jeopardy.

(a) In General.—(1) No authority convening a military commission under this chapter shall procure for the accused the name of any other exercise of its or his functions in the conduct of the proceedings.

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

(c) the action of any military commission under this chapter, or any member thereof, in reaching the findings or sentence in any case.

§ 949k. Duties of counsel and defense counsel.

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

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

(c) the action of any military commission under this chapter, or any member thereof, in reaching the findings or sentence in any case.

§ 949l. Sessions.

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

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

(c) the action of any military commission under this chapter, or any member thereof, in reaching the findings or sentence in any case.

§ 949m. Challenges.

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

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

(c) the action of any military commission under this chapter, or any member thereof, in reaching the findings or sentence in any case.
However, the person authorized under regulations prescribed under section 948k of this title to detail counsel, in that person's sole discretion, may detail additional military counsel to the accused;

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

§ 949d. Sessions

(a) Sessions Without Presence of Mem-
bers.—(1) At any time after the service of charges which have been referred for trial by a military commission under this chapter, the military judge may call the military com-
mission into session without the presence of the members for the purpose of—

(A) determining motions raising defenses or objections which are ca-
pable of determination without trial of the issues raised by a plea of not guilty;

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

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

(D) administering any other procedural function which may be performed by the military judge under this chapter or under rules pre-
scribed pursuant to section 949k of this title and which does not require the presence of the members.

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

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

(B) be made part of the record.

(b) Proceedings in Presence of Ac-
cused.—Except as provided in subsections (c) and (e), all proceedings of a military com-
mision under this chapter, including any consultation of the members with the mili-
tary judge or counsel, shall—

(1) be in the presence of the accused, de-
fense counsel, and trial counsel; and

(2) be made a part of the record.

(c) Deliberation or Vote of Members.—

When the members of a military commission under this chapter are deliberating or voting, only the members may be present.

(d) Closure of Proceedings.—(1) The military judge may close to the public all or part of the proceedings of a military commission under this chapter, but only in ac-
cordance with this subsection.

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

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

(B) ensure the physical safety of individ-
uals.

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

(e) Exception From Certain Procedi-
ings.—The military judge may ex-
clude the accused from any portion of a pro-
ceding upon a determination that, after being warned by the military judge, the ac-
cused persists in conduct that justifies exclu-
sion from the courtroom—

(1) to ensure the physical safety of indi-
viduals; or

(2) to prevent disruption of the pro-
cedings by the accused.

(1) Protection of Classified Information. —

(1) National Security Privilege.—(A) Classified information shall be protected and such protection shall include the privilege of non-disclosure which would be detrimental to the national secu-

The rule in the preceding sentence ap-
plies to all stages of the proceedings of mili-
tary commissions under this chapter.

(B) The privilege referred to in subpara-
graph (A) may be claimed by the head of the executive or military department or govern-
ment agency concerned in a finding by the head of that department or agency that—

(i) the information is properly classified; and

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

(C) A person who is a representative, witness, or trial counsel shall be entitled to the privilege referred to in subparagraph (A) if the person claims the privilege and makes the finding described in subparagraph (B) on behalf of such person. The authority of the represent-
ative, witness, or trial counsel to do so is presumed in the absence of evidence to the contrary.

(2) Introduction of Classified Information. —

(A) Alternatives to Disclosure.—To pre-
vent classified information from disclosure, the military judge, upon motion of trial counsel, shall authorize, to the extent practical,—

(i) the deletion of specified items of clas-
sified information from documents to be in-

troduced as evidence before the military commission; or

(ii) the substitution of a portion of sum-
mary of the information for such classified documents; or

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

(B) Protection of Sources, Methods, or Activi-
ties.—The military judge, upon mo-
tion of trial counsel, shall permit trial coun-

tel to introduce otherwise admissible evi-
dence before the military commission, while protecting from disclosure the sources, methods, or activities by which the United States acquired the evidence if the military judge finds that (i) the sources, methods, or activities by which the United States ac-
quired the evidence are classified, and (ii) the evidence is reliable. The military judge may require trial counsel to present to the military commission and the defense, to the extent practicable and consistent with na-

tional security, an unclassified summary of the sources, methods, or activities by which the United States acquired the evidence.

(C) Assertion of National Security Privilege at Trial.—During the examina-
tion of any witness, trial counsel may object to any question, line of inquiry, or motion to admit evidence that would require the dis-

closure of classified information. Following such objection, the military judge shall take suitable action to safeguard such classi-
sified information. Such action may include the review of trial counsel’s claim of privi-

lege by the military judge in camera and on an ex parte basis, and the delay of pro-
cedings to permit trial counsel to consult with the department or agency concerned as to whether the national security privilege should be asserted.

(2) Scope of Trial. —A claim of privilege under this section shall be so defined and limited as to be consistent with the duty of the military judge in camera and shall not be disclosed to the accused.

(3) Additional Regulations. —The Sec-

tary of Defense may prescribe additional regulations, consistent with this subsection, for the use and protection of classified information during proceedings of military com-

missions under this chapter. A report on any regulations so prescribed, or modified, shall be submitted to the Committees on Armed Services of the Senate and the House of Rep-

resentatives not later than 60 days before the date on which such regulations go into effect.

§ 949e. Continuances

(1) The military judge in a military commis-

sion under this chapter may, for reasonable cause, grant a continuance to any party for such time, and as often, as may appear to be just.

§ 949f. Challenges

(1) Challenges Authorized. —The mili-
tary judge and members of a military com-
mision under this chapter may be chal-


enced by the accused or trial counsel for cause stated to the commission. The mili-
tary judge shall determine the relevance and validity of challenges for cause. The military judge may not receive a challenge to more than one person at a time. Challenges by trial counsel shall ordinarily be presented and decided before those by the accused are offered.

(b) Peremptory Challenges. —Each ac-
cused and trial counsel are entitled to one peremptory challenge. The military judge may not be challenged except for cause.

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

§ 949g. Oaths

(1) In General. —(a) Before performing thei

r respective duties in a military commis-

sion under this chapter, military judges, military commissions, members, trial counsel, defense counsel, re-

resentatives not later than 60 days before the date on which such commissions go into effect.

(2) The form of the oath required by para-

graph (1), the time and place of the taking of the oath, or both, shall be prescribed by the military judge and the regulations so prescribed, or modified, shall be submitted to the Committees on Armed Services of the Senate and the House of Rep-

sentatives not later than 60 days before the date on which such commissions go into effect.

§ 949h. Former jeopardy

(1) In General. —No person may, without his consent, be tried by a military commis-
sion under this chapter a second time for the same offense.

(b) Scope of Trial. —No proceeding in which

the accused has been found guilty by a military commission or court-martial upon any charge or specification that a trial is in the sense of this section until the finding of guilty has become final after review of the case has been fully completed.

§ 949i. Pleas of the accused

(1) Entry of Plea of Not Guilty. —If an ac-
cused in a military commission under this
chapter after a plea of guilty sets up matter inconsistent with the plea, or if it appears that the accused has entered the plea of guilty through lack of understanding of its meaning, or if the accused, if the accused refuses to plead, a plea of not guilty shall be entered in the record, and the military commission shall proceed as though the accused had plead not guilty."

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

949j. Opportunity to obtain witnesses and other evidence—(a) RIGHT OF DEFENSE COUNSEL. —Defense counsel in a military commission under this chapter shall have a reasonable opportunity to obtain witnesses and other evidence as provided in section 949h of this title.

(b) PROCESS FOR COMPULSION.—Process issued by a commission under this chapter to compel witnesses to appear and testify and to compel the production of other evidence—(1) shall be similar to that which courts of the United States having criminal jurisdiction may lawfully issue; and

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

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

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

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

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

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

The military judge may require trial counsel to provide, to the extent practicable, an unclassified summary of the sources, methods, or activities by which the United States acquired such evidence."

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

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

949k. Defense of lack of mental responsibility—(a) AFFIRMATIVE DEFENSE. —It is an affirmative defense in a trial by military commission under this chapter that, at the time of the commission of the acts constituting the offense, the accused, as a result of a severe mental disease or defect, was unable to appreciate the wrongfulness of the acts. Mental disease or defect does not otherwise constitute a defense.

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

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

(1) guilty;

(2) not guilty; or

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

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

949l. Voting and rulings—(a) VOTE BY SECRET WRITTEN BALLOT.—Voting by secret written ballot in a military commission under this chapter on the findings and on the sentence shall be by secret written ballot.

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

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

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

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

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

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

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

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

(b) SENTENCES.—(1) No person may be sentenced by a military commission to suffer death, except as provided in section 949(a) of this chapter.

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

(B) trial counsel expressly sought the penalty of death by filing an appropriate notice of intention to seek death as part of the sentence; or

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

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

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

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

(2) In any case described in paragraph (1) in which the members are not reasonably available because of physical conditions or military exigencies, the convening authority shall specify a lesser number of members for the military commission (but not fewer than 9 members), and the military commission may be assembled, and the trial held, with no more members than the number of members so specified. In such a case, the convening authority shall make a detailed written statement, to be appended to the record, stating why a greater number of members were not reasonably available.

949n. Military commission to announce action—(a) A military commission under this chapter shall announce its findings and sentence to the parties at the time the vote is taken.

949o. Record of trial—(a) RECORD; AUTHENTICATION.—Each military commission under this chapter shall keep a separate, verbatim, record of the proceedings in each case brought before it, and the record shall be authenticated by the signature of the military judge. If the record cannot be authenticated by the military judge because of reason of his death, disability, or absence, it shall be authenticated by the signature of the trial counsel or by a member of the commission if the trial counsel is unable to authenticate it by reason of his death, disability, or absence. Where appropriate, and as provided in regulations prescribed by the Secretary of Defense, the record of a military commission under this chapter may contain a classified annex.

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

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

SUBCHAPTER V—SENTENCES

Sec. 949b. Cruel or unusual punishments prohibited.

949c. Maximum limits.

949d. Execution of confinement.
§949s. Cruel or unusual punishments prohib-
ited—

"Punishment by flogging, or by branding, mark-
ing, or tattooing on the body, or any other cru-
el or unusual punishment, may not be ad-
judged by a military commission under this chapter
upon any person subject to this chapter. The use of
iron, single or double, except for the purpose
of safe custody, is prohibited under this chapter.

§949t. Maximum limits—

"The punishment which a military com-
mission under this chapter may direct for an
offense, committed by a person subject to
such chapter, is limited as the President or Secretary of Defense may pre-
scribe for that offense.

§949u. Execution of confinement—

"(a) In General.—Under such regulations as
the Secretary of Defense may prescribe, a sen-
tence of confinement adjudged by a mili-
tary commission under this chapter may
be carried into execution by confinement—

(1) by the convening authority when
the control of an armed force; or

(2) in any penal or correctional institu-
tion under the control of the United States
or its territories, or which the United States may
be allowed to use.

(b) Treatment during Confinement by
Other than the Armed Forces.—Persons
confined under a sentence of penal or correctional
institution not under the control of an armed force are subject to the
same discipline and treatment as persons
confined in a penal or correctional institution by the courts of the
United States or of the State, District of Co-
lumbia, or place in which the institution is
situated.

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

Sec.

950a. Error of law; lesser included offense.

950b. Review by the convening authority.

950c. Appellate referral; waiver or with-
drawal of appeal.

950d. Appeal by the United States.

950e. Rehearings.

950f. Review by Court of Military Commis-
sions.

950g. Review by the United States Court of
Appeals for the District of Co-
lumbia Circuit and the Su-
preme Court.

950h. Appellate counsel.

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

950j. Finality or proceedings, findings, and
sentence.

950k. Error of law; lesser included offense

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

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

§950l. Reviewing authority—

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

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

(2)(A) Except as provided in subparagraph
(B), a submittal under paragraph (1) shall be
made in writing. If the convening authority
has been given an authenticated record of
trial under section 9490(c) of this title.

(B) If the accused shows that additional
time is necessary to make a submittal
under paragraph (1), the convening
authority may, for good cause, extend the
applicable period under subparagraph (A) for
not more than 10 days.

(3) The accused may waive his right to
make a submittal to the convening author-
ity in writing or under subsection (b) shall
be deemed to have expired upon the submittal
of a waiver under this paragraph to the con-
vening authority.

(c) ACTION BY CONVENCING AUTHORITY.—(1) The authority under this subsection to mod-
ify the findings and sentence of a military commission under this chapter is a matter of
the sole discretion of the convening
authority.

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

(B) Subject to regulations prescribed by
the Secretary of Defense, action on the sen-
tence under this paragraph may be taken
only after the matters sub-
mitted by the accused under subsection (b) or after the time for submitting such
matter expires, whichever is earlier.

(C) In taking action under this paragraph,
the convening authority may, in his sole dis-
cretion, approve, disapprove, commute, or
suspend the sentence as a whole or in part.

(d) Order of Revision or Rehearing.—(1) Subject to paragraphs (2) and (3), the con-
vening authority of a military commission under this chapter may, in his sole discre-
tion, order a proceeding in revision or a re-
hearing.

(2) SUBJECT TO (A) provision of subsection
(B), a proceeding in revision may be
ordered by the convening authority if—

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

(ii) the record shows improper or in-
consistent action by the military commis-
sion with respect to the findings or sentence that
can be rectified without material prejudice
to the substantial rights of the accused.

(3) In no case may a proceeding in revi-
sion—

(i) reconsider a finding of not guilty of a
specification; or

(ii) reconsider a finding of not guilty of
any charge, unless there has been a finding
of not guilty of a specification or charge
under the statute of which the sentence is
based, which sufficiently alleges a vio-
lation; or

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

(4) A rehearing as to the findings may be ordered by
the convening authority if the convening
authority disapproves the findings and sentence and states the reasons for disapproval of the
findings.

(5) If the convening authority dis-
approves the finding and sentence and does not
order a rehearing, the convening
authority shall dismiss the charges. A rehearing as to
the findings may not be ordered by the
convening authority when there is a lack of
sufficient evidence in the record to support the
findings.

(6) A rehearing as to the sentence may be ordered by the
convening authority if the convening
authority disapproves the sentence.

§950c. Appellate referral; waiver or with-
drawal of appeal—

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

(b) WAIVER OF RIGHT TO APPELLATE
REVIEW.—(1) In each case subject to appellate review under section
950f of this title, except a case in which the sentence as approved under section
950f of this title extends to death, the accused may file an appeal at any time.

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

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

§950d. Appeal by the United States—

"(a) INTERLOCUTORY APPEAL.—(1) Except as provided in paragraphs (2), (3) and (4) of this title,
the convening authority of a military commission under this chapter, the
United States may take an interlocutory ap-
ppeal to the Court of Military Commission
Review of any order or ruling of the military judge
that—

(A) terminates proceedings of the mili-
tary commission with respect to a charge or
specification;

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

(c) RELATING TO A MATT
ER UNDER SUBSECT
ION (a) or (b) of section
950f of this title;

(d) SUBJECT TO (A) or (B) provision of subsection
(B), a proceeding in revision or a rehearing may
be ordered by the convening authority if—

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

(ii) the record shows improper or in-
consistent action by the military commis-
sion with respect to the findings or sentence
that can be rectified without material prejudice
to the substantial rights of the accused.

(2) In no case may a proceeding in revi-
sion—

(i) reconsider a finding of not guilty of a
specification; or

(ii) reconsider a finding of not guilty of
any charge, unless there has been a finding
of not guilty of a specification or charge
under the statute of which the sentence is
based, which sufficiently alleges a vio-
lation; or

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

(3) A rehearing as to the findings may be ordered by
the convening authority if the convening
authority disapproves the findings.

(4) If the convening authority dis-
approves the finding and sentence and does not
order a rehearing, the convening
authority shall dismiss the charges. A rehearing as to
the findings may not be ordered by the
convening authority when there is a lack of
sufficient evidence in the record to support the
findings.

(b) APPEAL.—An appeal under this section shall be forwarded, by means specified in
section 950f of this title, directly to the Court of Military Com-
mission Review. In ruling on an appeal under
this section, the Court may act only with respect to matters of law.

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

§ 950e. Rehearings

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

(b) SCOPE OF HEARING.—(1) Upon a rehearing—

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

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

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

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

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

§ 950f. Review by Court of Military Commission Review

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

(b) APPOINTMENT AND COMPOSITION OF MILITARY JUDGES.—The Secretary shall appoint military judges to a Court of Military Commission Review. Each appellate military judge shall meet the qualifications prescribed by section 948j(b) of this title. The Secretary may, when requested to do so by the Attorney General in a case arising under this chapter, represent the United States before the United States Court of Appeals for the District of Columbia Circuit or the Supreme Court.

(c) REPRESENTATION OF ACCUSED.—The accused shall be represented by appellate counsel appointed under subsection (a). Appellate counsel shall meet the qualifications prescribed by section 948j(b) of this title. No court, justice, or judge shall have jurisdiction to hear or consider any claim, cause of action, or dispute, including any action pending on or filed after the date of the enactment of the Military Commissions Act of 2006, relating to the proceedings of military commissions under this chapter are binding upon all departments, courts, agencies, and officers of the United States, except as otherwise provided by the President.

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

SUBCHAPTER VII—PUNITIVE MATTERS

Sec. 950p. Statement of substantive offenses.

950s. Conviction of lesser included offense.

950t. Statement of substantive offenses.

950u. Consecutive sentences for separate counts.

950v. Crimes triable by military commissions.

950w. Perjury and obstruction of justice; contempt.

950x. Sentence of death.

(c) EXECUTION OF SENTENCE OF DEATH ONLY UPON FINAL JUDGMENT OF LEGALITY OF PROCEEDINGS.—If the sentence of a military commission under this chapter extends to a death penalty, the sentence may not be executed until there is a final judgment as to the legality of the proceedings (and with respect to death, approval under subsection (b)). In the event of a directed verdict or a directed verdict in favor of the defendant, the sentence is final for purposes of paragraph (1) when—

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

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

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

(ii) such a petition is denied by the Supreme Court or the Court of Appeals for the District of Columbia Circuit; and

(iii) review is otherwise completed in accordance with the judgment of the Supreme Court or the Court of Appeals for the District of Columbia Circuit.

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

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

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

(b) PROVISIONS OF CHAPTER SOLE BASIS FOR REVIEW OF MILITARY COMMISSION PROCEDURES.—Except as otherwise provided in this chapter and notwithstanding any other provision of law (including section 2241 of title 28 or any other habeas corpus provision), no court, justice, or judge shall have jurisdiction to hear or consider any claim, cause of action, or dispute, including any action pending on or filed after the date of the enactment of the Military Commissions Act of 2006, relating to the prosecution, trial, or judgment of a military commission under this chapter, including challenges to the lawfulness of procedures of military commissions under this chapter.
law) are declarative of existing law, they do not preclude trial for crimes that occurred before the date of the enactment of this chapter.

§ 950q. Principals

Any person subject to this chapter who—

(1) commits an offense punishable by this chapter, or aids, abets, counsels, commands, or procures the commission of an offense punishable by this chapter, shall be tried by a military commission under this chapter.

(2) causes an act to be done which directly or indirectly permitted by him would be punishable by this chapter; or

(3) is a superior commander who, with regard to acts punishable under this chapter, knew, had reason to know, or should have known, that a subordinate was about to commit such acts and did nothing to prevent or to take the necessary and reasonable measures to prevent such acts or to punish the perpetrators thereof.

§ 950t. Access to the fact

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

§ 950s. Conviction of lesser included offense

(5) An accused may be found guilty of an offense, or an attempt to commit the offense, and punished under this chapter, as a lesser included offense, if the accused committed the offense, or attempted to commit the offense, as set forth in section 950t, subsection (3).

(6) Conviction of an attempt to commit an offense punishable by this chapter may direct.

§ 950o. Attempts

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

(8) Any person subject to this chapter who intentionally engages in conduct, or attempts to engage in conduct, that would result in death or serious physical injury or suffering, such as, by direct or indirect action or threat, or by means of other military operations, including the use of weapons of mass destruction, as defined in section 468a, when such conduct or threat results in or is reasonably likely to cause the death or serious physical injury or suffering of one or more protected persons, shall be punished as a military commission under this chapter may direct.

§ 950u. Solicitation

(9) Any person subject to this chapter who, with the intent to commit an offense punishable by this chapter, solicits another person to commit such offense, shall be punished as a military commission under this chapter may direct.

§ 950v. Crimes triable by military commissi—

(a) Definitions and construction.—In this section:

(1) Military objective.—The term ‘military objective means—

(A) combatant; and

(B) those objects during an armed conflict—

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

(ii) which, by reason of their location, purpose, or function, required destruction, capture, or neutralization of which would constitute a definite military advantage to the attacker under the circumstances at the time of such act.

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

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

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

(C) military medical or religious personnel.

(3) Protected property.—The term ‘protected property means property specifically protected by the law of war (such as buildings devoted to religion, science or charitable purposes, historic monuments, hospitals, or places where the sick, wounded, or dead are or have been collected, which property is not being used for military purposes or is not otherwise a military objective. Such term includes objects properly designated as the distinctive emblems of the civilian populations of the Geneva Conventions, but does not include civilian property that is a military objective.

(4) Construction.—The intent specified for an offense under paragraph (1), (2), (3), (4), or (5) of subsection (b) precludes the applicability of such offense with regard to—

(A) a general order or plan of operations, of such a nature and scope that such order or such plan is not being used for military purposes;

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

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

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

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

(3) ATTACKING CIVILIAN OBJECTS.—Any person subject to this chapter who intentionally engages in an attack upon a civilian object that is not a military objective shall be punished as a military commission under this chapter may direct, and, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct.

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

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

(6) DENYING QUARTER.—Any person subject to this chapter who, with effective command or control over subordinate groups, declares, orders, or otherwise indicates to those groups that there shall be no survivors or surrender accepted, with the intent to threaten, or to cause death or surrender, to such persons and to kill, injure, or destroy, such persons or persons with the intent of compelling any nation, person other than the hostage, or group of persons to act or refrain from acting as an explicit or implicit condition for the safety or release of such person or persons, shall be punished, if death results to one or more of the victims or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, by such punishment, other than death, as a military commission under this chapter may direct.

(7) TAKING HOSTAGES.—Any person subject to this chapter who, having knowingly seized or detained one or more persons, threatens to kill, impersonates a hostage, or detains the hostage, shall be punished as a military commission under this chapter may direct.

§ 950w. Definitions.

(a) In this section—

(1) the term ‘serious physical pain or suffering’ means bodily injury that involves—

(i) a serious injury to a significant body part or organ of a person; and

(ii) a prolonged serious deprivation of a body function;
(1) a substantial risk of death;

(2) extreme physical pain;

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

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

(1) The term ‘severe mental pain or suffering’ has the meaning given that term in section 2350(2) of title 18.

(3) The term ‘serious mental pain or suffering’ has the meaning given the term ‘severe mental pain or suffering’ in section 2350(2) of title 18, except that—

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

(ii) as to conducting occurred after the date of the enactment of the Military Commissions Act of 2006, the term ‘serious and non-contrary mental harm (which need not be prolonged)’ shall replace the term ‘prolonged mental harm’ where it appears.

(13) INTENTIONALLY CAUSING SERIOUS BODILY INJURY.—

(a) OFFENSE.—Any person subject to this chapter who intentionally causes serious bodily injury to one or more persons by intentionally causing lawful combatants, in violation of the law of war, to accord, protection under the law of war, to anybody or more persons that they were entitled to, or obliged to accord, protection under the law of war, intentionally provides the term ‘serious bodily injury’ means bodily injury which involves—

(i) a substantial risk of death;

(ii) extreme physical pain;

(iii) protracted and obvious disfigurement; or

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

(b) SERIOUS BODILY INJURY DEFINED.—In this paragraph, the term ‘serious bodily injury’ means—

(i) a substantial risk of death;

(ii) extreme physical pain;

(iii) protracted and obvious disfigurement; or

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

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

(d) MUTILATING OR MAIMING.—Any person subject to this chapter who intentionally injures one or more persons, by intentionally causing lawful combatants, in violation of the law of war shall be punished by death or such other punishment as a military commission under this chapter may direct, and, if death does not result to any of the victims, including lawful combatants, in violation of the law of war shall be punished by death or such other punishment as a military commission under this chapter may direct.

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

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

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

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

(i) IMPROPERLY USING A VESSEL OR AIRCRAFT.—Any person subject to this chapter who intentionally seizes, exercises unauthorized control over, or endangers the safe navigation of a vessel or aircraft that is recognized by the law of war as a military aircraft shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct.

(j) IMPROPERLY USING A VESSEL OR AIRCRAFT.—Any person subject to this chapter who intentionally seizes, exercises unauthorized control over, or endangers the safe navigation of a vessel or aircraft that is recognized by the law of war as a military aircraft shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct.

(k) CONSPIRACY.—Any person subject to this chapter who conspires to commit one or more substantive offenses triable by military commission under this chapter, and who knowingly does any overt act to effect the object of the conspiracy, shall be punished, if death results to one or more of the victims, by death or death or such other punishment as a military commission under this chapter may direct.

(l) CONSPIRACY.—Any person subject to this chapter who, after inquiring the confidence or belief of one or more persons that they were entitled to, or obliged to accord, protection under the law of war, intentionally provides the confidence or belief in killing, injuring, or capturing such person or persons shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct.

(m) CONSPIRACY.—Any person subject to this chapter who conspires to commit one or more substantive offenses triable by military commission under this chapter, and who knowingly does any overt act to effect the object of the conspiracy, shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct.

(n) CONSPIRACY.—Any person subject to this chapter who, after inquiring the confidence or belief of one or more persons that they were entitled to, or obliged to accord, protection under the law of war, intentionally provides the confidence or belief in killing, injuring, or capturing such person or persons shall be punished, if death results to one or more of the victims, by death or such other punishment as a military commission under this chapter may direct.

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

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

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

(r) MURDER IN VIOLATION OF THE LAW OF WAR.—Any person subject to this chapter who intentionally kills one or more persons, including lawful combatants, in violation of the law of war shall be punished by death or such other punishment as a military commission under this chapter may direct. Given that term in section 2380a(b) of title 18.

(s) MURDER IN VIOLATION OF THE LAW OF WAR.—Any person subject to this chapter who, in breach of allegiance or duty to the United States, knowingly and intentionally aids an enemy of the United States, or one of the co-belligerents of the enemy, shall be punished as a military commission under this chapter may direct.

(t) MURDER IN VIOLATION OF THE LAW OF WAR.—Any person subject to this chapter who, in breach of allegiance or duty to the United States, knowingly and intentionally aids an enemy of the United States, or one of the co-belligerents of the enemy, shall be punished as a military commission under this chapter may direct.

(u) MURDER IN VIOLATION OF THE LAW OF WAR.—Any person subject to this chapter who, in breach of allegiance or duty to the United States, knowingly and intentionally aids an enemy of the United States, or one of the co-belligerents of the enemy, shall be punished as a military commission under this chapter may direct.

(v) MURDER IN VIOLATION OF THE LAW OF WAR.—Any person subject to this chapter who, in breach of allegiance or duty to the United States, knowingly and intentionally aids an enemy of the United States, or one of the co-belligerents of the enemy, shall be punished as a military commission under this chapter may direct.

(w) MURDER IN VIOLATION OF THE LAW OF WAR.—Any person subject to this chapter who, in breach of allegiance or duty to the United States, knowingly and intentionally aids an enemy of the United States, or one of the co-belligerents of the enemy, shall be punished as a military commission under this chapter may direct.

(x) MURDER IN VIOLATION OF THE LAW OF WAR.—Any person subject to this chapter who, in breach of allegiance or duty to the United States, knowingly and intentionally aids an enemy of the United States, or one of the co-belligerents of the enemy, shall be punished as a military commission under this chapter may direct.

(y) MURDER IN VIOLATION OF THE LAW OF WAR.—Any person subject to this chapter who, in breach of allegiance or duty to the United States, knowingly and intentionally aids an enemy of the United States, or one of the co-belligerents of the enemy, shall be punished as a military commission under this chapter may direct.

(z) MURDER IN VIOLATION OF THE LAW OF WAR.—Any person subject to this chapter who, in breach of allegiance or duty to the United States, knowingly and intentionally aids an enemy of the United States, or one of the co-belligerents of the enemy, shall be punished as a military commission under this chapter may direct.
end the following new sentence: "This section does not apply to a military commission established under chapter 47A of this title."

(3) INAPPLICABILITY OF REQUIREMENTS RELATING TO MILITARY COMMISSIONS.—Section 956 (article 36) is amended—

(A) in subsection (a), by inserting "except as provided in chapter 47A of this title," after "which is not a breach of the law of war;" (b) in subsection (b), by inserting before the period at the end "except insofar as applicable to military commissions established under chapter 47A of this title;"

(b) PUNITIVE ARTICLE OF CONSPIRACY.—Section 951 of title 10, United States Code (article 80 of Uniform Code of Military Justice), is amended—

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

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

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

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

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

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

(1) the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, done at Geneva August 12, 1949 (6 U.S.T. 3316); and

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

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


SEC. 6. IMPLEMENTATION OF TREATY OBLIGATIONS.

(a) IMPLEMENTATION OF TREATY OBLIGATIONS.—

(1) IN GENERAL.—The acts enumerated in subsection (d) of section 2441 of title 18, United States Code, as added by section 2 of the Armed Services Accountability Act of 1999, are offenses under this chapter, and such paragraphs as are not offenses under international law, constitute violations of common Article 3 of the Geneva Conventions prohibited by United States law.

(2) THE CRIMES OF WAR.—The provisions of section 2441 of title 18, United States Code, as amended by this section, fully satisfy the obligation under Article 129 of the Geneva Conventions for the United States to provide effective penal sanctions for grave breaches which are encompassed in common Article 3 in the context of the United States, (a) in interpreting the prohibitions enumerated in subsection (d) of such section 2441.

(3) INTERPRETATION BY THE PRESIDENT.—

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

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

(C) Any Executive Order published under this paragraph shall be authoritative (except as to grave breaches of common Article 3) as to grave breaches of the Geneva Conventions.

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

(4) DEFINITIONS.—In this subsection:

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

(i) the Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, done at Geneva August 12, 1949 (6 U.S.T. 3317);

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

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


(B) COMMON ARTICLE 3 VIOLATIONS.—

(1) P ROHIBITED CONDUCT.

(2) DEFINITIONS.

(3) WHICH ConstitUTES A GRA VE BREACH OF COMMON Article 3 VIOLATIONS.

(4) COMMON Article 3 VIOLATIONS.—

(A) PERSONAL TERRORISM.

(B) CRUEL OR INHUMAN TREATMENT.

(C) MUTILATION OR MAIMING.

(D) PERFORMING BIOLOGICAL EXPERIMENTS.

(E) ABUSING OR MALTREATING PERSONS WITHIN THE JURISDICTION OF THE UNITED STATES OR ITS TERRITORIES.

(F) INTENTIONALLY CAUSING SERIOUS BODILY INJURY.

(G) SEXUAL ASSAULT OR ABUSE.

(H) TAKING HOSTAGES.

(I) ABUSING, MALTRATING OR MISTREATING PERSONS UNDER FEDERAL CRIMINAL CODE.

(II) UNAUTHORIZED USE OR POSSESSION OF BIOLOGICAL MATERIALS.

(III) PERFORMING BIOLOGICAL EXPERIMENTS.

(IV) ABUSING OR MALTREATING PERSONS WITHIN THE JURISDICTION OF THE UNITED STATES OR ITS TERRITORIES.

(V) TAKING HOSTAGES.

(VI) ABUSING, MALTRATING OR MISTREATING PERSONS UNDER FEDERAL CRIMINAL CODE.

(VII) UNAUTHORIZED USE OR POSSESSION OF BIOLOGICAL MATERIALS.

(VIII) PERFORMING BIOLOGICAL EXPERIMENTS.

(III) UNAUTHORIZED USE OR POSSESSION OF BIOLOGICAL MATERIALS.

(IV) PERFORMING BIOLOGICAL EXPERIMENTS.
...the term ‘serious mental pain or suffering’ shall be applied for purposes of paragraph (1)(B) in accordance with the meaning given the term ‘severe mental pain or suffering’ in section 2441(b) of title 18, United States Code, as a mental harm (which need not be prolonged) or a mental injury (which may be prolonged), if and as much as is required by [the other provisions of the sentence].

...the term ‘United States who has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.’.

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

...the term "mental harm", as defined in section 2340(2) of this title, includes the following: (A) physical pain; (B) mental pain or suffering; (C) emotional pain or suffering; (D), (E), and (F) or paragraph (1) precludes any determinations in subsection (a) by reason of any determination made by the United States obligations under that Article.

...the term ‘United States who has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.’.

...the term ‘transitory mental harm (which need not be prolonged) or a mental injury (which may be prolonged), if and as much as is required by [the other provisions of the sentence].

...the term ‘Grave Breaches’ to mean any of the following acts: (a) killing of a prisoner; (b) torture or any other cruel, inhuman, or degrading treatment or punishment; (c) outrages upon personal dignity, in particular humiliating and degrading treatment; (d) additional prohibition on cruel, inhuman, or degrading treatment or punishment; (e) (1) in general.—No individual in the custody or under the physical control of the United States Government, regardless of nationality or physical location, shall be subject to cruel, inhuman, or degrading treatment or punishment.

...the term ‘crue, inhuman, or degrading treatment or punishment means cruel, unusual, and inhuman treatment or punishment prohibited by the Fifth, Eighth, and Ninth Amendments to the Constitution of the United States, as defined in the United States Reservations, Declarations and Understandings to the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment done at New York, December 10, 1984.

...the term ‘compliance.—The President shall take action to ensure compliance with this subsection, including through the establishment of administrative guidelines and procedures.

...the term ‘the term ‘mental harm’, as defined in section 2340(2) of this title, includes the following: (A) physical pain; (B) mental pain or suffering; (C) emotional pain or suffering; (D), (E), and (F) or paragraph (1) precludes any determinations in subsection (a) by reason of any determination made by the United States obligations under that Article.

...the term ‘Grave Breaches’ to mean any of the following acts: (a) killing of a prisoner; (b) torture or any other cruel, inhuman, or degrading treatment or punishment; (c) outrages upon personal dignity, in particular humiliating and degrading treatment; (d) additional prohibition on cruel, inhuman, or degrading treatment or punishment; (e) (1) in general.—No individual in the custody or under the physical control of the United States Government, regardless of nationality or physical location, shall be subject to cruel, inhuman, or degrading treatment or punishment.

...the term ‘crue, inhuman, or degrading treatment or punishment means cruel, unusual, and inhuman treatment or punishment prohibited by the Fifth, Eighth, and Ninth Amendments to the Constitution of the United States, as defined in the United States Reservations, Declarations and Understandings to the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment done at New York, December 10, 1984.

...the term ‘compliance.—The President shall take action to ensure compliance with this subsection, including through the establishment of administrative guidelines and procedures.

SEC. 7. HABEAS CORPUS MATTERS.

(a) In General.—Section 2241 of title 28, United States Code, is amended by striking both provisions of subsection (e) added by section 1005(e)(1) of Public Law 109-148 (119 Stat. 2742) and the subsection (e) added by section 1406(e)(1) of Public Law 109-183 (119 Stat. 2747) and inserting the following new subsection (e):

...the term ‘enemy combatant is a construct that was participated in by...
Congress. So you could say, I think, Mr. Speaker, that we have been charged not just by the President but by the Supreme Court with doing our job and putting together this process.

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

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

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

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

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

This is vital legislation important to the national security of the United States. Our foremost consideration in writing this legislation is to protect American troops and American citizens from harm.

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

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

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

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

I think a fair process has two guiding principles:

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

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

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

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

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

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

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

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

Right to Counsel, provided by government at trial and throughout appellate proceedings; Impartial judge; Presumption of innocence; Standard of proof beyond a reasonable doubt;
The right to be informed of the charges against him as soon as practicable;
The right to service of charges sufficiently in advance of trial to prepare a defense;
Mr. Speaker, since I am inserting my entire text in the RECORD, I will not read them all at this point.
The right to reasonable continuances;
The right to peremptory challenge against members of the commission and the military judge;
Witness must testify under oath; judges, counsel and members of military commission must take oath;
Right to enter a plea of not guilty;
The right to obtain witnesses and other evidence;
The right to exculpatory evidence as soon as practicable;
The right to be present at court with the exception of certain classified evidence involving national security, preservation of safety or preventing disruption of proceedings;
The right to a public trial except for national security issues or physical safety issues;
The right to have any findings or sentences announced as soon as determined;
Right against compulsory self-incrimination; Right against double jeopardy;
The defense of lack of mental responsibility; Voting by members of the military commission by secret written ballot;
Prohibitions against unlawful command influence toward members of the commission, counselor military judges;

2½ vote of members required for conviction;

¾ vote required for sentences of life or over ten years; unanimous verdict required for death by way of conviction;

Verbatim authenticated record of trial;

Cruel or unusual punishments prohibited;

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

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

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

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

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

How do we try the enemy for war crimes?

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

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

I want to talk a bit about how we handle classified evidence. We had three hearings on this bill in addition to briefings and meetings with experts. I asked every witness the same question. If we have an informant, either a CIA agent or an undercover witness of some sort, are we going to tell Kalid Sheik Mohammad who the informant is? This legislation does not allow KSM to learn the identity of the informant. After several twists and turns in the road, after meeting with the Senate and the White House in marathon sessions over the weekend, we have crafted a solution that does not allow KSM to learn the identity of the informant, yet provides a fair trial. How do we do this?

We address this in Section 949d(f) of Section 3. Classified evidence is protected and is privileged from disclosure to the jury and the accused if disclosure would be detrimental to national security. The accused is permitted to be present at all phases of the trial and no evidence is presented to the jury that is not also provided to the accused.

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

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

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

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

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

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

Section 6 of the bill also provides that any defendant under the custody or physical control of the United States will not be subject to "cruel, inhuman or degrading treatment or punishment" prohibited by the Fifth, Eighth and Fourteenth Amendments to the Constitution, as defined by the U.S. reservations to the UN Convention against Torture. This defines offenses under article 1 of the Convention under Article 3 of the Geneva Conventions, by reference to the U.S. constitutional standard adopted by the Detainee Treatment Act of 2005.

Section 7 of the bill addresses the question of judicial review of claims by detainees by amending 28 U.S.C. Section 2242 to clarify the intent of the Detainee Treatment Act of 2005 to limit the right of detainees to challenge their detention. The practical effect of this amendment will be to eliminate the hundreds of detainee lawsuits that are pending in courts throughout the country. It will consol ide all detainee treatment cases in the D.C. Circuit. However, I want to stress that under this provision detainees will retain their opportunity to file legitimate challenges to their status and to challenge convictions by military commissions. Every detainee under confinement in Guantanamo Bay will have their detention reviewed by the U.S. Court of Appeals for the District of Columbia.

Mr. SENSENIBRENNER and my other colleagues are going to speak on the rest of the bill, but before I finish I want to make one point very clear. This legislation does not condone or authorize torture in any way. In fact, we make it a war crime, punishable by death, for one of our soldiers or interrogators to torture someone to death. Let me emphasize this again. In Section 6 of this bill, we amend 18 U.S.C. 2441, the War Crimes Act. In this amendment we explicitly provide that torture inflicted upon a person in custody for the purpose of obtaining information is a war crime for which we may prosecute one of our own citizens.

While most of this legislation deals with how we handle the enemy, I want to make it crystal clear that nothing in what we are doing condones or allows torture in any way.
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Mr. Speaker, I reserve the balance of my time.

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

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

Now, here we are trying to establish a tribunal or a commission, which we should do and need to do. The Supreme Court, as a result of the Hamdan decision, said that we in Congress need to do. In my debate and amendments recently, I pointed out some seven areas of constitutional uncertainty which may very well cause a reversal of a conviction. Consequently, I think this bill before us, as I have said before, is standing on the evidence: a mistake made by the judge or a comment made by the prosecutor. On the other hand, someone may have their conviction overturned in the event that the law upon which the conviction is based is unconstitutional. Such a situation is untenable. It is unfair to our military commissions, a statement obtained in the pages of this bill.

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

I urge my colleagues to support this vital legislation.
comfortable with regard to this process, not only if I were the military prosecutor but even if I were the military defense counsel, about the protections that we are affording not only this unlawful enemy combatant but making sure that we have a balance of interrelated procedures.

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

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

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

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

I read his editorial, and I also then looked at the law. Let me now speak unto the law professor: read the bill. Just like what you would do to your law students, you would tell them to read the bill. And when you read the bill and when you open it up, you would find that the words you wrote so that the readers in California would have no trouble taking what action, or give you credit or credence to your words, your words are false. And that is completely unfortunate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. NADLER. It is supposed to be done by a tribunal under article V, but it is not. It may have to be. We have never held such a tribunal.

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

Please, don’t be silly and just make things up.

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

Mr. Speaker, let me just go to the Detainee Act. It says that review is done by the District of Columbia relating to any aspect of the detention of an alien, and we have expanded it from Guantánamo Bay to anywhere, who has been determined by the United States District Court of Appeals for the District of Columbia to have been determined by the United States does not participate in that process. They are in the hands of aliens to determine status, a person’s status. The President of the United States does not participate in that process.

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

The war crimes tribunals in Yugoslavia and Rwanda allow hearsay evidence. As I recall, the bill that was offered by Mr. SKELTON, that was voted on in the HASC, in the Armed Services
Mr. BUYER. What I would like to agree to personnel, and that is clarity. The other point is that H.R. 6166 and S. 3930 could make new crimes and expose Americans to prosecution simply for sup- lishing unfortunate people in other countries who are struggling for their freedom.

The third point is that H.R. 6166 and S. 3930 could make it unnecessary for our soldiers, sailors, airmen and marines and our intelligence agents that they know what the crimes are when they have people in custody, and the fact that those grave crimes, and they are enumerated, are defined, gives clarity to our folks so they know what the offenses are. I think that serves the purpose. It does not disserve the purpose. But the idea that we have also reserved to the President on nongrave offenses, that is well with us. But the idea that was given by expert testimony was if you use the term “degrading,” you could charge that a female JAG officer interrogating a Muslim male is in and of itself degrading, because it is a female interrogating a male, and in their culture that would be considered to be degrading.

I think it is important not to expose that female JAG officer to liability. And it is important, therefore, when you have what you might consider to be minimally informed, but have labeled that person, that American, a war criminal, but to allow the President as Com- mander in Chief to put forth reputa-

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

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

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

Mr. HUNTER. Mr. Speaker, let me just make a comment about the fact that we enu- merate the crimes that might be com- mitted, what we call the grave offenses under article III.

I think that it accrues to the benefit of our soldiers, sailors, airmen and marines and our intelligence agents that they know what the crimes are when they have people in custody, and the fact that those grave crimes, and they are enumerated, are defined, gives clarity to our folks so they know what the offenses are. I think that serves the purpose. It does not disserve the purpose. But the idea that we have also reserved to the President on nongrave offenses, that is well with us. But the idea that was given by expert testimony was if you use the term “degrading,” you could charge that a female JAG officer interrogating a Muslim male is in and of itself degrading, because it is a female interrogating a male, and in their culture that would be considered to be degrading.

I think it is important not to expose that female JAG officer to liability. And it is important, therefore, when you have what you might consider to be minimally informed, but have labeled that person, that American, a war criminal, but to allow the President as Com- mander in Chief to put forth reputa-

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

Mr. BUYER, Mr. Speaker, will the gentle- man yield?

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

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

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

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

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

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

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

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

Mr. CONYERS. I thank the gentle- man for yielding. He has done great legal work from the Armed Services Committee. I just keep going through my mind, and this is getting to be a night and
day job, because I have a Member I respect so much in judiciary, Mr. LUNGREN, who keeps trying to tell us that there are two writs of habeas corpus. A wonderful idea, if it were only true.

The statutory writ of habeas corpus, I say to my colleagues from Texas, SHEILA JACKSON-LEE, and have provided an expedited Constitu-
tion review of the entire matter to give you are talking about is absolutely in-
correct.

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

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

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

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

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

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

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

Mr. SKELTON has made it very clear, we could fix this, because he would have provided an expedited Constitu-
tion review of the entire matter to give the opportunity for entry into the courts under habeas. It would also re-
quire that these military commissions, because they are eliminating rights, we are not saying releasing people, we are saying eliminating rights, that then get related to the manner of treatment of the prisoners incarcerated or taken off the battlefield that are our soldiers.

Secondly, it refuses to give reauthor-
ization language to the military com-
missions. We don’t know where we will be in a few years, as we are being nega-
tively this will impact our soldiers on the battlefield, which next conflict that, God forbid, we may have to be en-
gaged in.

Also, the language that my friends have gone beyond the scope of the Su-
preme Court’s decision in Hamdan to decide whether or not detainees have habeas rights. The court already de-
cided they do. Or whether or not the habeas provisions in the Detainee Treatment Act are constitutionally legal. The habeas provisions in the legis-
lation are contrary to congressional intent in the Detainee Treatment Act. In that act, Congress did not intend to strip the courts of jurisdiction over the pending habeas.

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

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

I rise in strong opposition to S. 3930, the Military Commissions Act. I oppose this bill be-
cause 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 legis-
lation 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 accord-
ingly, and we want those convictions to be upheld by our courts.

Democrats want the President to have the best possible intelligence to prevent future ter-
rorist 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, jus-
tice will be done.” But Democrats understand that justice requires the Congress to establish a system for trying suspected terrorists that not only is fundamentally fair but also con-
sistent with the Geneva Convention.

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

S. 3930, the compromise before us, in-
cludes some improvements that I strongly sup-
port. For example, evidence obtained through torture can no longer be used against the ac-
cused. Similarly, the compromise bill provides that hearsay evidence can be challenged as unreliable.

Perhaps the most important improvement of the bill passed by the House is that ac-
cused 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, re-
dacted, declassified, or otherwise made avail-
able to the accused, by 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 fa-
vored by dictators and totalitarianists but be-
neath 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 deserves a right to know what evidence is being used.

However, I am concerned that there is rea-
sion to believe that even with this compromise legislation, this system of military commissions might not to endless litigations struck down by the courts. Then we would find our-
selves back here again next year, or five years from now, trying to develop a system that can finally bring the likes of Khalid Sheik Mohammed to justice. Why would we want to give terrorist detainees a “get out of jail free” card when we can avoid that by establishing military commissions that work. As currently written, the compromise bill has provisions that could lead to the reversal of a conviction.

Specifically, the bill contains a section that strips the federal court jurisdiction over habeas corpus petitions filed prior to the pas-
sage of the Detainee Treatment Act last De-
cember on behalf of detainees at Guantanamo Bay. Mr. Speaker, nine former federal judges were so alarmed by this prospect that they wrote a complaint to 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 two detainees whose 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 Gene-
va Convention requires that a military commis-
sion be a regularly constituted court affording all the necessary "judicial guarantees which are recognized as indispensable by civilized peoples. Notwithstanding the provision in the House bill that the military commissions established therein satisfy this standard, the fact is that other nations will agree. Simply saying so does not make it so. Moreover, they may well be right. Consider this, Mr. Speaker:

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

To provide limited immunity to govern-
ment 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 Conven-
ations. U.S. agents could not be tried under the War Crimes Act if an unlawful act was engaged in only "grave breaches" of the Geneva Conven-
ions. U.S. agents could not be tried under the
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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 is that it’s good enough for the United States, it’s good enough for our European allies, and it’s good enough for the United States military missions.

What’s more, Mr. Speaker, the Geneva Conventions also protect those not in uniform—special forces personnel, diplomatic personnel, CIA agents, contractors, journalists, missionaries, and all other civilians. Our engagement with America’s allies is to protect their citizens. We must do likewise.

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 extends the review to military commissions.

REQUIRING REAUTHORIZATION IN THREE YEARS

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

The Military Commissions Act of 2006 is a far-reaching measure that implements an entirely new kind of military justice system out of the Uniform Code of Military Justice. It has numerous provisions that are still poorly understood by many in Congress. By requiring a reauthorization in three years, we give Congress the ability to carefully review how this system is working and whether the rules need to be reformed.

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

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

Mr. Speaker, even Republicans on the House Judiciary Committee admitted that the only way Congress was able to get information out of the Justice Department about the operation of the PATRIOT Act was that Congress had to reauthorize it—similarly, the only way Congress can 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. By requiring Congress to reaffirm its ability to hold the Administration accountable and review the military commission program, we provide encouragement for others to do the right thing.

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 record that no one would be outside 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 Conventions.

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 to respect their humanity. 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.

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

And what they are saying, what this bill says is the President or his designee can designate someone as an unlawful enemy combatant, throw him in jail, and get no benefits.

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

First, there is nothing in this language that directs people to pick up or not pick up people. This is the language. This bill designs and constructs a tribunal. Otherwise, this language has no meaning. That’s page 3 of the bill.

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

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

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

The bill before us is not the right way to do justice by the American people. I therefore cannot support it and urge my colleagues to reject it. We have time to come up with a better bill, and we can do better if we deserve it.
jurisdiction to try any offense made punishable by this chapter or the law of war when committed by an alien unlawful enemy combatant before, on, or after September 11, 2001," That would allow us also to try those folks from the Cole and the Embassy bombings.

With or without a law, if there is no soldier in the world, no POW in the world from our research who has a habeas right.

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

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

So I just want to go over those points. I reserve the balance of my time.

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

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

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

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

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

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

Ms. JACKSON-LEE of Texas. If the gentilwoman would yield just for a moment. I thank you for your comments.

I think the Court shares the view that the framework for soldiers may not be habeas in civilian language, but there is a procedure that soldiers would have to be able to petition their detention, and it is a military term. And what we are saying is that the language of the commission language is that doesn't exist.

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

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

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

Mr. BUYER. Mr. Speaker, to bring a chill into the debate, the issue of who will try terrorists not only centers about a conviction, but it centers on whether or not we will have a military justice system to try suspected war criminals.

We want this legislation to be as fair as possible. We want this legislation to be as fair to the terrorists and their lawyers as possible. We want to make sure that the due process rights of these folks are protected. We want to make sure that these folks are treated with the same kind of respect for human life and the rule of law that is embodied in this legislation.
I urge my colleagues to support this legislation, and let me reiterate for my colleagues the 26 rights for terrorist detainees that are created by this legislation. They include:

- The right to be informed of the charges against them as soon as practically possible.
- The right to service of charges sufficiently in advance of trial to prepare a defense;
- The right to reasonable continuances;
- The right to preeminent challenge against members of the commission and challenges for cause against members of the commission and the military judge;
- Witness must testify under oath, and judges, counsels and members of the military commission must take an oath;
- There is a right to enter a plea of not guilty;
- There is a right to obtain witnesses in other evidence;
- There is a right to exculpatory evidence as soon as possible.
- There is a right to be present in court with the exception of certain classified evidence involving national security, preservation of safety or preventing disruption of proceedings;
- The right to a public trial except for national security issues or physical safety issues;
- The right to have any findings or sentences announced as soon as determined;
- The right against compulsory self-incrimination;
- The right against double jeopardy;
- The defense of lack of mental responsibility;
- Voting by members of the military commission by secret written ballot;

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

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

Verbatim authenticated record of trial;

Cruel or unusual punishments are prohibited;

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

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

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

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

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

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

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

[From the New York Times, Sept. 28, 2006]  
RUSHING OFF A CLIFF

Here’s what happens when this irresponsible Congress railroad a profoundly important bill to serve the mindless politics of a midterm election. The administration uses Republicans’ fear of losing their majority to push through glibly ideas about antiterrorism that will make American troops hate to come home to our 217-year-old nation of laws—while actually doing nothing to protect the nation from terrorists. Democrats betray their principles to avoid last-minute attack ads. Our democracy is the big loser.

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

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

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

These are some of the bill’s biggest flaws:

- Enemy Combatants: A dangerously broad definition of “illegal enemy combatant” in the bill could subject legal residents of the United States, as well as foreign citizens living in this country who are summarily arrested and indefinitely detained with no hope of appeal. The president could give the power to apply this label to anyone he wanted.

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

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

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

Coerced Evidence: Coerced evidence would be permissible if a judge considered it reliable—albeit in ways that are not in the act itself and relevant. Coercion is defined in a way that exempts anything done before the passage of the 2005 Detainee Treatment Act, and anything else Mr. Bush chooses.

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

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

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

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

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

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

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

The President in this measure would be free to try anyone without charging them, to unilaterally reinterpret the Geneva Conventions, to authorize what normal people consider torture, and to deny justice to hundreds of men captured in error.

Is there anybody that would really want to implement a piece of legislation on this last day before recess that would do that? The editorial, pretty much everyone else, wants to implement a piece of legislation that’s consistent with our principles, so we can have justice and respect for those who are fighting in this war.

But then I come to the gentleman from Indiana who says that there is no such thing as a person who has engaged in hostilities or who has purposefully or materially supported hostilities against the United States, and they go
on to tell you that he can be subjected to a combatant status review tribunal or any other tribunal established under the authority of the President or the Secretary of Defense. That's the first page.

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

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

Mr. NADLER. Mr. Speaker, the radical nature of this bill is that, as the gentleman from Michigan said, anybody picked up in Chicago can be subject to this bill. The President can determine unilaterally, look at paragraph 1 on page 3, that someone is an unlawful enemy combatant, or they can hold him in jail forever. That is wrong.

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

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

Under this, though, you say he is an unlawful enemy combatant and that's that. You never hear much him again. That is against all our traditions. It makes the President a dictator because someone who claims the power to put someone in jail forever, with no hearing, no evidence, and no recourse, is a dictator. And on page 69 of the bill it says, that person is determined by the tribunal to entertain habeas corpus, which is simply a request to say show me why you are holding me in jail, or to enter any action saying, Hey, you are torturing me, about the condition of confinement. So you can take this person because the President says so, put him in jail, subject him to any torture or whatever, and whatever you write in the 1,300 words of this bill, there is no one to bring the complaint before it. That is wrong and it is insupportable.

Mr. SENSENBRENNER. Mr. Speaker, the gentleman from California, Mr. LUNOSEN, was so moved by the last speech and the criticism of the Administration that he referred to the definition of unlawful enemy combatants. So where initially he referred to the definition of unlawful enemy combatants, this bill refers to "alien" unlawful enemy combatants engaged in hostilities against the United States. So you can't pick up just anybody in the United States.

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

Second, the limitations on habeas corpus also only apply to alien enemy combatants. By its very terms, section 7 says that "no court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien detained by the United States who has been determined by the United States to have been properly detained...

Therefore, under the expressed terms of the bill, an American citizen will have the unencumbered ability to challenge his or her detention as they have under the Constitution. So let's not confuse it. Let's read all sections of the bill. We are dealing with, as the bill says, "alien unlawful enemy combatants," those people who are not in uniform, those people who are not following the rules of international law with respect to war, those people who hide behind women and children, those people who use the very fact that they are not identified as "legal combatants" to try to kill and maim Americans around the world.

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

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

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

My good friend from California is arguing, if we had taken the time to clarify this bill. Let me tell you what is really in the bill.

First of all, as I continue to acknowledge the existence of the lost lives of our soldiers, the bill does not clarify this whole definition. We have 11,000 non-U.S. citizens serving in the United States Army. We have individuals who are U.S. legal aliens, United States citizens. There is no clarification that they could not be defined as an unlawful enemy combatant. The definition of "alien unlawful enemy combatant" is defined; in some places it is not.

In addition, the Geneva Conventions is not respected. We have taken this away from the McCain-Warner compromise, and we have destroyed it because what we have done is given the President, not this President, any President, the ability to adjudicate what the Geneva Conventions, how to interpret it, how to utilize it.

This is a wrong way to go. This should have more time. This is not a political opportunity. This is not a campaign speech. These are the lives of our soldiers.

Mr. Speaker, at this time I will introduce the Record a letter from admiral and, as well, the 911 families opposing the military tribunal commission.
strip the courts of jurisdiction to hear their pending habeas cases. The habeas cases are the only avenue open for them to challenge the bases for their detention—potentially life imprisonments—under the "enemy combatants" label.

We strongly agree with those who have argued that we must arrive at a position worthy of America. I.e., that we must allow military commissions to rely on secret evidence, hearsay, and evidence obtained by torture. But it would be utterly inconsistent, and unworthy of our nation and human values, to include language in the draft bill that would, at the same time, strip the courts of habeas jurisdiction and allow detainees to be held, potentially in violation of our fundamental rights, that relied on just such evidence. The effect would be to give greater protections to the likes of Khalid Sheikh Mohammed than to the vast majority of the Guantanamo detainees, who claim that they had nothing to do with al Qaeda or the Taliban.

We are on a course that should have been plotted and navigated years ago, and we might be close to consensus. We ask that, in the closing moments of your consideration of this vital bill, you restore the faith of those who long have been the voice for simple commitment to our longstanding basic principles, to our integrity as a nation, and to the rule of law. We urge you to oppose any further erosion of the proper authority of our courts and to reject any provision that would strip the courts of habeas jurisdiction.

As Alexander Hamilton and John Paul Jones emphasized in the Federalist Papers, the writ of habeas corpus embodies principles fundamental to our nation. It is the essence of the rule of law, ensuring that neither king nor executive may deprive a person of liberty without some independent reason to ensure that the detention has a reasonable basis in law and that it must be preserved. Fair hearings do not jeopardize our security. They are what our country stands for.

Sincerely,

JOHN D. HUTSON,
Rear Admiral, JAGC, USN (Ret.).

DONALD J. GUTER,
Rear Admiral, JAGC, USN (Ret.).

DAVID M. BRADHS,
Brigadier General, NTSAMC (Ret.).

9/11 FAMILIES OPPOSE ADMINISTRATION EFFORTS TO UNDERMINE GENEVA CONVENTIONS

WASHINGTON, D.C. - Today 9/11 families members sent a letter to the Senate strongly opposing the Bush Administration’s proposals to undermine the Geneva Conventions, decriminalize brutal interrogations and create military commissions lacking fundamental due process guarantees.

The letter challenges the Administration’s claim that the Military Commissions Act of 2006 is needed to make America safer. “There are those who would like to portray the legislation as a choice between supporting the rights of terrorists and keeping the United States safe. We reject this argument. We believe that adopting policies against terror, which honor our values and our international commitments makes us safer and is the smarter strategy.”

The letter urges members of Congress to reject any legislation that would erode our international reputation and complicate future military operations.

The letter was signed by the parents of a FDNY fireman killed in the World Trade Center collapse, the mother of a NYPD policewoman who served in Peleliu and other fronts of all four of the attacks, including a passenger on Flight 93 that crashed in Pennsylvania.

The letter closes by urging members of Congress to “reject the Administration’s ill-conceived proposals which will make us both less safe and less proud as a nation.”

SEPTEMBER 14, 2006

DEAR SENATOR: As members of families who lost loved ones in the 9/11 attacks, we are writing to express our deep concern over the provisions of the Administration’s proposed Military Commissions Act of 2006.

There are those who would like to portray the legislation as a choice between supporting the rights of terrorists and keeping the United States safe. We reject this argument. We believe that adopting policies against terrorism which honor our values and our international commitments makes us safer and is the smarter strategy.

We do not believe that the United States should decriminalize cruel and inhuman interrogations. The Geneva Convention rules against brutal interrogations have long had the strong support of the U.S. because they protect our citizens. We should not be sending a message to the world that we now believe that torture and cruel treatment is sometimes acceptable. Moreover, the Administration’s own representatives at the Pentagon have strongly affirmed in just the last few days that torture and abuse do not provide reliable information. Any legislation should have your support if it is at all ambiguous on this issue.

Nor do we believe that it is in the interest of the United States to create a system of military courts that violate basic notions of due process and lack truly independent judicial oversight. Not only does this violate our most cherished values and send the wrong message to the world, it also runs the risk that the system will again be struck down as unconstitutional.

We believe that we must have policies that reflect what is best in the United States rather than compromising our values out of fear. As John McCain has said, “This is not about who the terrorists are, this is about who we are.” We urge you to reject the Administration’s ill-conceived proposals which will make us both less safe and less proud as a nation.

Sincerely,


David Portorti, Donna Marsh O’Connor, Kjell Youngren, Blake Allison, Tia Kminek, Jennifer Glick, Lorie Van Auken, Mindy Kleinberg, Anthony Aversano, Paula Shapiro, Valerie Lucznikowska, Lloyd Glick.

James and Patricia Perry, Anne M. Mckinley, Marion Kminek, Alissa Rosenberg-Torres, Kelly Campbell, Bruce Wallace, John M. Leinung, Kristen Breitweiser, Patricia Casazza, Michael Casazza, Lovetta J. Filipov, Joan Glick.

Mr. CONYERS, Mr. Speaker, I yield 2 minutes to the gentleman from Maryland (Mr. HOYER), our distinguished whip.

Mr. HOYER. Mr. Speaker, I thank the gentleman from Michigan for yielding.

I rise to talk about briefly coddling terrorists.

There is no one in this body, no one in this country who wants to coddle terrorists. But let me remind my friends that Saddam Hussein was taken out of a hole and captured. And we did not torture him, and we have accorded him legal rights to hear the evidence, to address the court, and be represented by counsel. Why did we do that? Because we wanted to coddle Saddam Hussein? Did this administration want to coddle Saddam Hussein? Absolutely not. But because his values and the values of the international community suggested that.

And the “Butcher of Belgrade,” Milosevic, who murdered tens of thousands of people and who unleashed 2 million people, we accorded him legal rights because we wanted to coddle him? No. Because that was our value system.

And, yes, even the butchers of Berlin, those who murdered millions of people in the Second World War, at Nuremberg were given their rights to see the evidence, to confront their accusers, and to have the proof adduced at trial. Why did we do that? Because we wanted to coddle the former rulers of Berlin? Absolutely not. It was because those are our values, the values of the international community, and the values of our Founding Fathers.

Let us not rush to judgment in this instance. Let us recognize and honor our values. That does not mean that we coddle the murderer, the rapist, or the terrorist. It means that we want a civilized society in which to live in this country and, yes, around the world.

Mr. CONYERS. Mr. Speaker, I yield 15 seconds to my colleague from Oregon (Mr. WU).

Mr. WU. Mr. Speaker, we do a grave injustice today because this statute applies to American citizens as well as everybody else.

Fred Korematsu was a U.S. citizen. He was picked up on a U.S. street. And we issued an apology years later.

I hope that this Congress, long after we are out of office, long after we are dead, some future Congress will be issuing an apology.

Mr. CONYERS. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, this has been an exceedingly interesting discussion here today. I only close by reminding the distinguished member of the Judiciary Committee from California that in the opening parts of this law, this bill, there is no word “alien” anywhere in it. It is referring to an unlawful enemy combatant. An unlawful enemy combatant could be an American.

So I oppose this legislation, finally, because it endangers our troops because we are lowering the standards set forth in the Geneva Conventions by allowing the President to unilaterally interpret the conventions and that can be used against our own troops. Don’t endanger our own troops.

Mr. SENSENBRUECKER. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, there is one issue that really has not come up in this debate, and that is the immunity that is given in this bill to the people who are interrogating the enemy combatants.
We need to pass this bill so that interrogations can start up again because without the immunity, anybody who is hired by the United States Government to try to find out whom they are planning on blowing up next would be subject to a lawsuit that would be filed by some advocate who would claim that he was representing the public interest.

This is a protection bill for the interrogators. It is something that is needed, and that is another reason why it ought to pass.

Mr. MCGOVERN. Mr. Speaker, I will not take up any more time speaking about why I oppose this bill. I spoke at length during the House debate, and nothing has changed over the past 48 hours to make me believe that undermining our history, values and constitutional commitment to human rights, civil rights, the rule of law, due process, and judicial review is the right thing to do.

Instead, I would like to submit for the RECORD the views of others in the face of this monumental mistake this Congress is making in submitting to the demands of an imperial White House.

I ask unanimous consent to submit into the RECORD the following materials:

1. Resolution Condemning Torture by the Conference of Major Superiors of Men;

2. A September 22, 2006 letter from human rights organizations to the U.S. Senate regarding the Military Commissions Act of 2006;


RESOLUTION CONDEMNING TORTURE

CMSG condemns torture in all its forms regardless of putative justification, and encourages support and help for victims of torture throughout the world, but especially in areas under the control of the United States Government.

Rationale: Jesus’ death and resurrection revealed the infinite value of each human being in God’s eyes. (Cf. Mt. 5:44–48; 10:29–31)

Torture is a denial of that value. The Catholic Church condemns torture as a denial of human dignity. (See, e.g., The Second Vatican Council [#27] ascribes the same status to any violation of the integrity of the human person, such as mutilation, physical and mental torture, undue psychological pressures,” including them in a list that also contains “all offenses against life itself, such as murder, genocide, abortion, euthanasia and willful suicide.”)

Resolution: Given the universal condemnation of torture as a denial of human dignity by national and international law and religious documents, the Conference of Major Superiors of Men resolves:

To condemn unequivocally any use of torture by agents of any government for any reason;

To encourage its constituencies to use their resources of education, preaching and advocacy to eliminate use of torture as contrary to both natural law and human dignity, and in fundamental opposition to God’s salvific love for humanity;

To support the efforts to work in advocacy for the abolition of torture, and to offer help and support to victims of torture.

The Justice and Peace office will be responsible for implementing this policy.


The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) defines torture as follows:

For the purposes of this Convention, the term “torture” means any act by which se- vere pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

The Convention Against Torture embodies our nation’s commitment to establishing standards of conduct and prohibiting torture and other acts of inhuman treatment of persons in U.S. custody. Tragically, our nation’s record has been marred by reported instances of abusive treatment of enemy combatants held in military prisons in Iraq, Afghanistan and Guantanamo Bay, Cuba. (The complete document is available at www.usccb.org/sdw/international/senateletterretorture100405.pdf.)

Recent actions brought to light the involvement of the U.S. military and other agencies in the liquidation of detainees, the installation of torture on prisoners demand a faith-based response. The USCCB has spoken as follows on the issue:

The United States has a long history of leadership and strong support for human rights around the world. Ratifications of the Convention on the Rights of the Child and the Convention Against Torture embody our nation’s commitment to establishing standards of conduct and prohibiting torture and other acts of inhuman treatment of persons in U.S. custody. Tragically, our nation’s record has been marred by reported instances of abusive treatment of enemy combatants held in military prisons in Iraq, Afghanistan and Guantanamo Bay, Cuba. (The complete document is available at www.usccb.org/sdw/international/senateletterretorture100405.pdf.)

The CMSM Executive Committee issued a statement in May of 2004 that included the following:

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The Conference of Major Superiors of Men, with the cooperation of the White House, has been in the process of defining and narrowing the scope of US obligations under Common Article Three of the Geneva Conventions, its language concerning the War Crimes Act contains potentially dangerous ambiguities. These ambiguities create serious risks for American servicemembers as well as detainees. While we agree that the good faith interpretation of U.S. law, including the Detainee Treatment Act, and U.S. international obligations make it absolutely clear that practices such as waterboarding, cold cell, prolonged standing, sleep depriv- ation, threats and assaults on prisoners are illegal. These and similar abusive techniques must be abandoned. The CMSM will be the first to applaud any such declaration, and we will be the first to report on progress being made.

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Recent actions brought to light the involvement of the U.S. military and other agencies in the liquidation of detainees, the installation of torture on prisoners demand a faith-based response. The USCCB has spoken as follows on the issue:

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other legal justifications have been provided for conduct we consider to be indisputably illegal under both U.S. and international law. Against this background of repeated legal contortions to justify and permit torture and abuse—some abandoned, some apparently still in effect—it is absolutely essential that the Congress be clear that these kinds of interrogation techniques are illegal and covered by the War Crimes Act. We urge you to leave no shred of doubt on these crucial issues by naming specific techniques. The interrogation techniques defined by the War Crimes Act or, at a minimum, creating a legislative record that these techniques are prohibited.

We have seriously considered the bill that strip individuals who are detained by the United States of the ability to challenge the factual and legal basis of their detention. Habeas corpus is necessary to avoid wrongful deprivations of liberty and to ensure that executive detentions are not grounded in torture or other abuse. Likewise, we are deeply concerned about the provisions that permit the use of evidence obtained through coercion.

This letter is not intended to offer a comprehensive catalogue of the provisions in the proposed compromise legislation which are of great concern. We appreciate the efforts you have made to provide for safeguards that assure interrogations cannot take place and to provide fair judicial procedures for detainees. However, we do not believe that the proposed compromise is adequate to have satisfied those important goals and feel strongly that these issues must be resolved.

Sincerely,

Center for Victims of Torture; Brennan Center for Justice at NYU Law School; Center for American Progress Action Fund; Physicians for Human Rights; World Against the Death Penalty; Open Society Policy Center; Amnesty International USA; Human Rights Watch; Center for National Security Studies; Human Rights First; American Civil Liberties Union; Robert F. Kennedy Memorial Center for Human Rights; Center for Human Rights and Global Justice, NYU School of Law;

[From the New York Times, Sept. 28, 2006] RUSHING OFF A CLIFF

Here’s what happens when this irresponsible session of Congress passes a profoundly important bill to serve the many low points in American democracy, our government, and our international standing.

Midterm election: The Bush administration uses Republicans’ fear of losing their majority to push through a bill to horribly undermine their commitment to antiterrorism that will make American troops less safe and do lasting damage to our 217-year-old nation of laws—while actually doing nothing to protect the nation from terrorists.

Democrats betray their principles to avoid last-minute attack ads. Our democracy is the big loser.

Republicans say Congress must act right now to create procedures for charging and trying terrorists—because the men accused of plotting the 9/11 attacks are available for trial.

Democrats say they could have been tried and convicted long ago, but President Bush chose not to. He held them in illegal detention, had them question in ways that will make real trials very hard, and invented a transparently illegal system of kangaroo courts to convict them.

It was only after the Supreme Court issued the inevitable ruling striking down Mr. Bush’s shadow penal system that he adopted his tone of urgency. It serves a cynical goal: Republican strategists think they can win forcing Democrats to vote against a bad one so they could be made to look soft on terrorism.

Last week, the White House and three Republican senators announced a terrible deal on the bill. President Bush most of what he wanted, including a blanket waiver for crimes Americans may have committed in the service of his antiterrorism policies. Former Attorney General John Ashcroft and his willing lawmakersons rewrote the rest of the measure so that it would give Mr. Bush the power to jail pretty much anyone he wants for as long as he wants without charging them, to unilaterally interpret the Geneva Conventions, to authorize what normal people consider torture, and to deny justice to the accused.

These are some of the bill’s biggest flaws:

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

The Geneva Conventions: The bill would repudiate the law of international law precedent by allowing Mr. Bush to decide on his own what abusive interrogation methods he considered permissible. And his decision could stay beyond his term in office.

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

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

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

Offenses: The definition of torture is unacceptable narrow, a virtual reprise of the 2005 Detainee Treatment Act, and any other interpretation.

The administration’s policy has undergone a sea change. The executive branch has abandoned the idea that “torture”—that is, anyone so defined by the White House or Defense Department—may be locked up indefinitely without ever being charged. That secret system of indefinite detention is groundless, that congressional input or oversight is unnecessary and that international laws and treaties are irrelevant. The Geneva Conventions, in particular, some of the key senators challenging the president’s position are senior Republicans. Principle is triumphing over partisanship. Let’s hope the debate will end with the United States’ embracing a position that will allow America to reclaim the moral high ground.

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but the real aim appears to be to let CIA employees engage in "rough" interrogations without fear of legal sanctions.

Powell and the senators argue that the guidelines are all they are—"a kind of calculated ambiguity that deters U.S. interrogators from testing the limits." "Clarifying" our treaty obligations will be seen as both a step forward from them and a genuine "clarification" of the Conventions? If we "clarify" the Conventions to allow, say, waterboarding and other "rough" procedures, what happens to a CIA operative who is captured in a foreign country? That country "clarify" the Conventions and torture him? If it does, would the United States have any basis to condemn it and take action under international law?

Powell made another argument to me. "Part of the war on terror is an operational and political struggle," he said. "Our moral posture is one of our best weapons. We're not doing so well on the public-diplomacy front. This is a huge career signal to the world." The administration seems blind to this political reality. After Guantánamo, Abu Ghraib, Haditha and more, America is despised and humiliated in an unprecedented way. We should be exploring as basic decency, deposing with the Geneva Conventions is the wrong signal, by the way, by the administration, at the wrong time.

Mr. UDALL of Colorado. Mr. Speaker, the Senate-passed bill before us today is identical to H.R. 6166. I would not support that bill that the House considered it earlier this week, and nothing that has happened since then has caused me to change my view that it should not be enacted. So, I must continue to oppose it.

As I said earlier, I agree that Congress should establish clear statutory authority for detaining unlawful enemy combatants and using military tribunals to try them. In fact, I thought this should have been done long ago because I took seriously the warnings of legal experts who said the system established by President Bush's unilateral Executive Order lacked departed too far from America's fundamental legal traditions to be immune from serious legal challenges.

That is why for several years I have cosponsored bills to replace that Executive Order with a sound statute that would allow prosecutions to proceed without the same vulnerability to challenge.

Unfortunately, until recently neither the president nor the Republican leadership thought there was a need for Congress to act—the president preferred to insist on unilateral assertions of executive authority, and the leadership was content with an indolent abdication of Congressional authority and responsibility.

Three years ago, the Supreme Court struck down the system established by the Executive Order—just what many of us had seen coming, and which we had sought to avoid through legislation.

So, not voting on this bill only because the Supreme Court has forced the Administration to do what it should have done much sooner—come to Congress for legislation. And the voting is occurring this week, under rushed procedures that do not permit consideration of any changes, because, above all, the Republicans have decided they need to claim a legislative victory when they go home to campaign, to help take voters' minds off the Administration's missteps and their own failures.

But I think it's important we do the job done before the election than to do it right. And, regretfully, I remain convinced that this bill fails that test.

I remain concerned about the bill's specific provisions. But just as serious are my concerns about what the bill does not say. In particular, I am concerned about the lack of any provisions to prevent indefinite detentions of American citizens who have never left the United States.

I cannot support any legislation intended to give the president—any president of any party authority to throw an American citizen into prison without what the Supreme Court has described as "a meaningful opportunity to contest the factual basis for that detention before a neutral and independent decision maker" that shows a basic decency. Deposing with the Geneva Conventions is the wrong signal, by the wrong administration, at the wrong time.

I remain concerned that the bill gives the president the authority to "interpret and apply" 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 Convention is intended to ban.

I cannot forget or discount the words of RADM Bruce MacDonald, the Navy's Judge Advocate General, who told the Armed Services Committee "I go back to the reciprocity issue that we raised earlier, that I would be very concerned about other nations looking in on the United States and making a determination that, if it's good enough for the United States, it's good enough for us, and perhaps doing a lot of damage and harm internationally if one of our service men or women were taken and held as a detainee."

I share that concern, and could not in good conscience support legislation that could put our men and women in uniform at risk.

Mr. Speaker, as I said earlier, establishing a system of military tribunals to bring to trial some of the worst terrorists in the world shouldn't be a partisan matter. It also should not be handled in a rush, without adequate care to get it right. Unfortunately, that has been the process used to develop this legislation and the result is a measure that I think has too many flaws to deserve enactment as it stands.

So, as I said earlier, I cannot support it.

[From the Los Angeles Times, Sept. 28, 2006]

THE WHITE HOUSE WARDEN

(By Bruce Ackerman)

Buried in the complex Senate compromise on the "enemy combatant" issue is an enduring policy challenge of great importance. The compromise runs far beyond the legal struggles about foreign terrorist suspects in the Guantánamo Bay fortress. The compromise, which is racing toward the White House, authorizes the president to seize American citizens as enemy combatants, even if they have never left the United States. And once thrown into military prison, they cannot expect a trial, or any other of the normal protections of the Bill of Rights. . . . This grants the president enormous power over citizens and legal residents. They can be designated as enemy combatants if they have contributed money to a Middle Eastern charity, and they can be held indefinitely in a military prison. . . . What is worse, if the federal courts suppress information necessary to make an accurate detention decision, ordinary Americans would be required to defend themselves before a military tribunal without the constitutional guarantees provided in criminal trials."

And, as Professor Akerman notes: "We are not dealing with hypothetical abuses. The president has already subjected a citizen to military confinement. Consider the case of Jose Padilla. A few months after 9/11, he was seized by the Bush administration as an "enemy combatant" upon his arrival at Chicago's O'Hare International Airport. He was wearing civilian clothes and had no weapons. Despite his American citizenship, he was held for more than three years in a military brig, without any chance to challenge his detention before a military or civilian tribunal. After a federal appellate court upheld the president's extraordinary action, the Supreme Court refused to hear the case, handing the administration's lawyers a terrible precedent. . . . But the bill also reinforces the president's claims, made in the Padilla case, that the commander in chief has the right to designate a U.S. citizen on American soil as an enemy combatant and subject him to military justice. Congress is poised to authorize this presidential overreaching. Under existing constitutional doctrine, this show of explicit congressional support would be a key factor that the Supreme Court would consider in assessing the limits of presidential authority."

I do not have the legal expertise to say that Professor Akerman is completely right in this analysis. But I cannot in good conscience vote for this bill and the more merited it is wrong. And, as I said when the House first considered this bill, it is clear that several of its provisions raise enough legal questions that military lawyers say there is a good chance the Supreme Court will rule it unconstitutional.

They may or may not be right about that, but their views deserve to be taken seriously—only not because we in Congress have sworn to uphold the Constitution but because if our goal truly is to avoid unnecessary delays in bringing terrorists to justice, we need to take care to craft legislation that can and will operate soon, not only after prolonged legal challenges.

Finally, I remain concerned that the bill gives the president the authority to "interpret and apply" 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 are intended to ban.

I cannot forget or discount the words of RADM Bruce MacDonald, the Navy's Judge Advocate General, who told the Armed Services Committee "I go back to the reciprocity issue that we raised earlier, that I would be very concerned about other nations looking in on the United States and making a determination that, if it's good enough for the United States, it's good enough for us, and perhaps doing a lot of damage and harm internationally if one of our service men or women were taken and held as a detainee."

I share that concern, and could not in good conscience support legislation that could put our men and women in uniform at risk.

Mr. Speaker, as I said earlier, establishing a system of military tribunals to bring to trial some of the worst terrorists in the world shouldn't be a partisan matter. It also should not be handled in a rush, without adequate care to get it right. Unfortunately, that has been the process used to develop this legislation and the result is a measure that I think has too many flaws to deserve enactment as it stands.

So, as I said earlier, I cannot support it.
residents. They can be designated as enemy combatants if they have contributed money to a Middle Eastern charity, and they can be held indefinitely in a military prison.

Note the bill's defenders. The president can't deny somebody who has given money innocently, just those who contributed to terrorists on purpose.

But the bill's new language for the bill of rights cuts off their access to federal habeas corpus, leaving them at the mercy of the president's suspicions.

We are not dealing with hypothetical abuses. The president has already subjected a citizen to military confinement. Consider the case of Jose Padilla. A few months after 9/11, he was seized by the Bush administration as an ‘enemy combatant’ upon his arrival at Chicago International Airport. He was wearing civilian clothes and had no weapons. Despite his American citizenship, he was held for more than three years without trial, without any chance to challenge his detention before a military or civilian tribunal. After a federal appellate court upheld the president’s extraordinary actions, the Supreme Court refused to hear the case, handing the administration’s lawyers a terrible precedent.

The new bill, if passed, would further entrench presidential power. At the very least, it would encourage the Supreme Court to draw an invidious distinction between citizens and legal residents. There are tens of millions of immigrants living among us, and the bill encourages the justices to uphold mass detentions without the semblance of judicial review.

But the bill also reinforces the presidential claims, made in the Padilla case, that the commander in chief has the right to designate a U.S. citizen on American soil as an enemy combatant and subject him to military justice. Congress is poised to authorize this presidential overreach. Under existing law, the president could use the military tribunals to try accused terrorists for their war crimes. But it must be done in such a way that the American people are confident that our values are upheld. I do not believe that this bill makes this clear to the American people or to the international community that looks to us as a place of human rights and fairness.

Some people may question me for changing my vote. I believe that elected officials must have the strength to recognize new information and to take it into account to make the right decision. I wish President Bush would do the same thing with our policies in Iraq.

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

The SPEAKER pro tempore. All time for debate has expired.

Pursuant to House Resolution 1054, the Senate bill is considered read and the previous question is ordered.

The question is on the third reading of the Senate bill.

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

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

The question was taken; and the Speaker pro tempore announced that the ayes had it.

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

The yeas and nays were ordered.

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

CONFERENCE REPORT ON H.R. 5122, JOHN WARNER NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2007

Mr. HUNTER of California (during consideration of H. Res. 1053) submitt ed the following conference report and statement on the bill (H.R. 5122) to authorize appropriations for fiscal year 2007 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strength for such fiscal year, and for other purposes:

[Conference Report will appear in Book II of CONGRESSIONAL RECORD dated September 29, 2006.]

WAIVING REQUIREMENT OF CLAUSE 6(a) OF RULE XIII WITH RESPECT TO CONSIDERATION OF THE MAIN RESOLUTION

Mr. COLE of Oklahoma. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 1053 and ask for its immediate consideration.