

## EXTENSIONS OF REMARKS

IN RECOGNITION OF ACHIEVEMENTS OF MADISON COUNTY HISTORICAL SOCIETY IN EDWARDSVILLE, IL

**HON. JOHN SHIMKUS**

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, July 9, 2002*

Mr. SHIMKUS. Mr. Speaker, I rise today to recognize the achievements of the Madison County Historical Society in the Edwardsville, Illinois area.

Edward Coles was the second Governor of the State of Illinois. Born in central Virginia in 1786 to a wealthy father who grew tobacco and was a slave owner, Coles would later in life decide that owning slaves was not the right thing to do. It is thought that this idea was instilled in him when he studied at William and Mary College in Williamsburg, VA. He did not support the philosophy that people could own other people when a professor raised it at the school.

Coles father died in 1807 leaving Edward a 782-acre farm and 23 slaves. He decided that freeing the slaves would be the right thing to do, but that would have been impossible because of the strict provisions in Virginia. The law stated that any freed slave must leave the State within a year of emancipation, which insured the failure of the slaves as free citizens. On top of that the other slave owners in the area would have surely hung Coles for his betrayal of their highly prized trade.

In 1810 Edward became Personal Secretary for President Madison in Washington DC. He was very successful in the world of politics, but still wanted to free the slaves under his control. After President Madison's first term Coles quit the White House and went west looking for a place to free his slaves. He came back from his excursion with a plan and an idea.

After a brief stint as a diplomat to Russia, Coles bought 3,500 acres in Illinois and accepted an appointment as land Registrar in Edwardsville, Illinois. He packed up his belongings and 22 slaves and headed towards Edwardsville. Coles waited until he was West of the Ohio River before he let anyone know his plan to free the slaves that worked for him. After he told them that they were free to go 5 went to Kentucky, 7 to Missouri, and 10 followed Coles the rest of the way. It is said that Edward provided the slaves that followed him with land of their own. He also provided all of his former slaves with money and supplies, as they needed them.

Later in life Coles was Governor of Illinois for one term. He ran for Congress in 1832 and lost, which is when he came to the conclusion that he wanted to move back to the East Coast. He moved to Philadelphia where he married a lady named Sally Logan Roberts, and had three children with her.

Some people do not only look for reward in the form of offices or titles, but in gratification for doing the right thing. Mr. Edward Coles

was one of these people, and without his support and belief in the abolitionist movement many more people would have been sold as property and treated as less than human. Mr. Coles was a man who did the right thing when the challenge presented itself.

I want to commend the Madison County Historical Society for their efforts to keep the Coles Legacy of freedom and decency alive.

### THE INTRODUCTION OF THE MILITARY TRIBUNALS ACT OF 2002

**HON. ADAM B. SCHIFF**

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

*Tuesday, July 9, 2002*

Mr. SCHIFF. Mr. Speaker:

SEPARATION OF POWERS

Our great nation was founded on the basic principles of liberty and justice for all. And one of the founding principles of our government is a separation of powers, and a system of checks and balances.

We set up our government this way for a reason. The delegates to the Constitutional Convention faced a difficult challenge—to create a strong, cohesive central government, while also ensuring that no individual or small group in the government would become too powerful. They formed a government with three separate branches, each with its own distinct powers.

Without this separation of powers, any one branch of government could have the power to establish a tribunal, decide what charges would be covered and what due process would be afforded, and also serve as judge and jury. The intent of the framers was to avoid these kinds of imbalances of power—to provide checks and balances.

That is why Congress must have a role in setting up military tribunals.

THE ROLE OF MILITARY TRIBUNALS

As the United States and its allies continue to engage in armed conflict with al Qaeda and the Taliban, military tribunals provide an appropriate forum to adjudicate the international law of armed conflict. While it may sound incongruous to have a justice system to deal with crimes of war, this process ensures adherence to certain international standards of wartime conduct. In order to garner the support of the community of nations, military trials must provide basic procedural guarantees of fairness, consistent with the international law of armed conflict and the International Covenant on Civil and Political Rights.

CONSTITUTIONAL JUSTIFICATION

Congressional authorization is necessary for the establishment of extraordinary tribunals to adjudicate and punish offenses arising from the September 11, 2001 attacks, or future al Qaeda terrorist attacks against the United States, and to provide a clear and unambiguous legal foundation for such trials.

This power is granted by the U.S. Constitution, which gives Congress the authority to

constitute tribunals, define and punish offenses against the Law of Nations, and make rules concerning captures.

While Congress has authorized the President to use all necessary and appropriate force against those nations, organizations, or persons that he determines to have planned, authorized, committed, or aided the terrorist attacks or harbored such organizations or persons, Congress has yet to expressly authorize the use of military tribunals.

CRAFTING THE BILL

In November, 2001, the President issued a military order which said non-U.S. citizens arrested at home or abroad could be tried by military tribunals. In March, 2002, the Department of Defense announced rules for military trials for accused terrorists.

These rules made no provision for the writ of habeas corpus, or an adequate appeals process. In addition, there was no accounting of persons who were being detained.

Believing that Congress should play a critical role in authorizing military tribunals, I began discussing this issue with legal organizations, military law experts, and legal scholars. The result of these discussion is the Military Tribunals Act of 2002, which I am introducing today.

WHO IS COVERED

My bill will give the President the authority to carry out military tribunals to try individuals who are members of al Qaeda or members of other terrorist organizations knowingly cooperating with or aiding or abetting persons who attack the United States.

UNLAWFUL COMBATANTS

The Geneva Conventions limit the ways regular soldiers who surrender or are captured may be treated, but there is a very clear distinction made between lawful enemy combatants (a member of a standing/recognized army), who would not be subject to a tribunal, and unlawful enemy combatants (civilians who take up arms) who would.

Currently, there are more than 500 persons who are being detained at Guantanamo Bay. They have been classified by the Department of Defense as unlawful enemy combatants, and each one could potentially be subject to a military tribunal. But without legislative backing, any military tribunal adjudication of guilt may later be challenged on the basis that the tribunals were not authorized by Congress. Congressional action would make it abundantly clear that military tribunals are an appropriate venue for trying unlawful enemy combatants. Spelling out the requirements for a military tribunal would ensure that sentences, when they are handed down, could be defended from judicial invalidation.

DUE PROCESS

My bill would ensure that the basic tenets of due process are adhered to by a military tribunal. The tribunal would be independent and impartial. The accused would be presumed innocent until proven guilty, and would only be found guilty if there was proof beyond a reasonable doubt. The accused would be promptly notified of alleged offenses. The proceedings would be made available to relevant

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

parties in other languages as necessary. The accused would have the opportunity to be present at trial. The accused would have a right to be represented by counsel. The accused have the opportunity to confront, cross-examine, and offer witnesses. The proceedings would be expeditious. The accused would be afforded all necessary means of defense. A conviction would be based on proof that the individual was responsible for the offense. A conviction could not be upheld on an act that was not an unlawful offense when it was committed. The penalty for an offense would not be greater than it was when the offense was committed. The accused would not be compelled to confess guilt or testify against himself. A convicted person would be informed of remedies and appeals processes. A preliminary proceeding would be held within 30 days of detention to determine whether a trial may be appropriate. The tribunal would be comprised of a military judge and not less than five members. The death penalty would be applied only by unanimous decision. The accused would have access to evidence supporting each alleged offense, except where disclosure of the evidence would cause identifiable harm to the prosecution of military objectives, and would have the opportunity to both obtain and present exculpatory evidence, and to respond to such evidence.

#### HABEAS CORPUS

Finally, the writ of habeas corpus would not be infringed, as it is a critical tenet of our justice system. Every person should be entitled to a court determination of whether he is imprisoned lawfully and whether or not he should be released from custody. This basic tenet dates back to 1215 when it stood in the Magna Carta as a critical individual right against arbitrary arrest and imprisonment.

Courts have referred to habeas corpus as "the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action." Without judicial review, the police can arrest people without warrants and jail people without trials.

U.S. Senator ARLEN SPECTER has noted, "Simply declaring that applying traditional principles of law or rules of evidence is not practical is hardly sufficient. The usual test is whether our national security interests outweigh our due process rights, and the administration has not made the case."

A careful reading of the President's military order reveals that "military tribunals shall have exclusive jurisdiction, and the individual shall not be privileged to seek any remedy or maintain any proceeding, directly or indirectly . . . in any court of the United States or any state thereof, any court of any foreign nation, or any international tribunal."

#### APPEALS PROCESS

Another critical protection we must retain in these trials is that of an appeals process. My bill calls for the Secretary of Defense to promptly review convictions by such tribunals to ensure that the procedural requirements of a full and fair hearing have been met. It also calls for the United States Court of Appeals for the Armed Forces established under the Uniform Code of Military Justice to review the proceedings, convictions, and sentences of such tribunals. Finally, the Supreme Court would review the decisions of the United States Court of Appeals for the Armed Forces. This is the most appropriate system of judicial review, especially since the U.S. Court of Ap-

peals for the Armed Forces would not have to appoint special masters or magistrates to do the necessary fact finding.

#### PUBLIC PROCEEDINGS

We gain the confidence of our citizenry by ensuring that trial proceedings are open to the public. My bill would require trial and appeal proceedings to be accessible to the public, while securing the safety of observers, witnesses, tribunal judges, counsel, and others. Evidence available from an agency of the Federal Government, however, may be kept secret from the public if such evidence would harm the prosecution of military objectives or intelligence sources or methods.

#### DETENTION

The bill allows for the Secretary of Defense to detain a person who is subject to a tribunal consistent with the international law of armed conflict. However these detentions would only be authorized while a state of armed conflict continues, or while a prosecution or a post-trial proceeding is ongoing. Under the Military Tribunals Act of 2002, the United States District Court for the District of Columbia would have exclusive jurisdiction to ensure that the requirements for detaining an accused are satisfied.

And while an accused is held, the detainee shall be treated humanely, without any adverse distinction based on race, color, religion, gender, birth, wealth or any similar criteria. Adequate food, drinking water, shelter, clothing, and medical treatment shall be provided. Finally, a detainee's right to the free exercise of religion would not be infringed.

#### REPORTS TO CONGRESS

Without protections and reporting requirements in place, persons detained for an indefinite amount of time would have no recourse. Currently in America, the total number of persons detained by both the Department of Justice and the Department of Defense is unknown. In many cases, there is little information, if any, available about who has been detained and why. My bill requires the President to report annually to Congress on the use of the military tribunal authority. Each such report would include information regarding each person subject to, or detained pursuant to, a military tribunal, and each person detained pursuant to any actual or planned act of terrorism, who has not been referred for trial in connection with that act of terrorism to a criminal court or to a military tribunal. With this provision, we can significantly reduce the danger that due process might be evaded by simply failing to bring detainees before a tribunal for trial.

#### CONCLUSION

There is some debate about the necessity of Congressional input in the establishment of military tribunals. But there is no doubt that legislative branch input can provide indispensable safeguards, such as an appeal to an independent entity, that the executive branch simply cannot provide on its own. By exercising Congress' role in the process, we will ensure that our justice system remains a beacon for the rest of the world, where due process is protected, and the accused are afforded basic protections.

We are living in an extraordinary time, a difficult time. But we are defined as a nation by how we handle these difficult times. Our government's words and deeds are important, not only for the legal precedents we set, but also

for the message we send to our global neighbors. During this, the most significant international crisis of our day, we have an opportunity to show the world the true meaning of justice, liberty, and the freedoms upon which America was founded.

#### PERSONAL EXPLANATION

#### HON. MAJOR R. OWENS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Tuesday, July 9, 2002

Mr. OWENS. Mr. Speaker, yesterday I was unavoidably absent and missed rollcall votes Nos. 283 and 284. If present I would have voted "yea."

#### HONORING THE CENTENNIAL OF LOCAL 309 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

#### HON. JERRY F. COSTELLO

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, July 9, 2002

Mr. COSTELLO. Mr. Speaker, I rise today to ask my colleagues to join me in recognizing the 100th anniversary of the International Brotherhood of Electrical Workers, Local 309.

The International Brotherhood of Electrical Workers (IBEW) is as old as the commercial use of electricity itself. It is the oldest, as well as the largest, electrical union in the world. IBEW Local 309 will mark 100 years of pride for its members who have been leaders in producing the most highly trained and skilled workers in the country.

Various histories of labor record no attempts to organize electrical workers during the experimental days of electricity. In 1844 the first telegraph wires were strung between Washington and Baltimore carrying that famous message of Samuel Morse, "What hath God wrought?" This was the first electrical accomplishment of commercial importance. It changed the whole aspect of electricity, which most people believed to be an interesting but dangerous experiment. In 1848 the first telegraph station was built in Chicago. By 1861 a web of telegraph lines crisscrossed the United States, and in 1866 the transatlantic cable was laid. Linemen to string the wires became a necessity, and young men flocked eagerly to enter this new and exciting profession.

With Edison's invention of the first successful incandescent lamp in 1879, the general public became aware of the possibilities of electricity. The electric power and light industry was established with the construction of the Pearl Street Generating Station in New York in 1882. Where once only a few intrepid linemen handled electricity for a thrill, many now appeared on the scene, and wiremen, too, seeking a life's work. As public demand for electricity increased, the number of electrical workers increased accordingly. The surge toward unionism was born out of their desperate needs and deplorable safety conditions.

Beginning in 1870 many small, weak unions organized, and then disappeared. However, by 1880 enough telegraph linemen had organized