

**Statement of Assistant Majority Leader Dick Durbin
Obama Administration's Handling of Terrorist Suspects
February 24, 2010**

Mr. President, in recent weeks, my Republican colleagues have directed a barrage of criticism at President Obama for his handling of terrorist cases, and I wish to respond.

Miranda Warnings

Let's start with the recent case of Umar Faruk Abdulmutallab, the man who tried to explode a bomb on a plane around Christmas when it was landing in Detroit. My colleagues on the other side have been very critical of the FBI's decision to give Miranda warnings to Abdulmutallab.

The Republican minority leader recently said, referring to Abdulmutallab: "He was given a 50 minute interrogation, probably Larry King has interrogated people longer and better than that. After which he was assigned a lawyer who told him to shut up."

That is what the Minority Leader said. But here are the facts:

- Experienced counterterrorism agents from the FBI interrogated Abdulmutallab when he arrived in Detroit.
- According to the Justice Department, during this initial interrogation, the FBI "obtained intelligence that has already proved useful in the fight against Al Qaeda."
- After the interrogation, Abdulmutallab refused to cooperate further with the FBI. Only then, after his refusal, did the FBI give him a Miranda warning.
- What the FBI did in this case was nothing new. During the Bush administration, the FBI also gave Miranda warnings to terrorists detained in the United States.

I respect Senator *McConnell*, but I say, respectfully, that he got his facts wrong. Frankly, this unfounded criticism of the FBI and their techniques should be corrected. That is why I stand here today.

Attorney General Eric Holder recently sent a detailed, 5-page letter to Senator *McConnell* explaining what actually happened in this case. I ask unanimous consent that it be printed in the *Record*.

There being no objection, the material was ordered to be printed in the *Record*, as follows: [*Text of February 3, 2010 letter from Attorney General Holder to Senator McConnell*]

Here is what General Holder said: "Across many administrations, both before and after 9/11, the consistent, well-known, lawful, and publicly stated policy of the FBI has been to provide Miranda warnings prior to any custodial interrogation conducted inside the United States."

In fact, the Bush administration adopted new policies for the FBI that said "Within the United States, Miranda warnings are required to be given prior to custodial interviews." That was a requirement from the Bush administration. Senator *McConnell* and others have tried to politicize this issue when the facts tell us otherwise.

Let's take one example from the Bush administration. Richard Reid, the shoe bomber, tried to detonate an explosive in his shoe on a flight from Paris to Miami in December 2001.

This was very similar to the attempted attack by Abdulmutallab, another foreign terrorist who also tried to detonate a bomb on a plane. So how does the Bush administration's handling of the shoe

bomber, Mr. Reid, compare with the Obama administration's handling of Abdulmutallab? The Bush administration detained and charged Reid as a criminal. They gave Reid a Miranda warning within 5 minutes of being removed from the airplane and they reminded him of his Miranda rights four times within the first 48 hours he was detained.

Has America heard that side of the story, as we have heard all these criticisms about Miranda warnings for Abdulmutallab?

The Republicans have been very critical of the Obama administration for giving a Miranda warning to this attempted, would-be bomber 9 hours after he was first detained, after a 50-minute interrogation. But they did not criticize their own Republican President when his administration gave a Miranda warning to the shoe bomber 5 minutes after he was detained, and before he was interrogated at all.

How do they square this? How can they be so critical of President Obama when a similar parallel case was treated so differently under a Republican President?

Interrogating Terrorist Suspects

In mid-January, Abdulmutallab began talking again to FBI interrogators and providing valuable intelligence--after the Miranda warnings. FBI Director Robert Mueller described it this way: "over a period of time, we have been successful in obtaining intelligence, not just on day one, but on day two, day three, day four, and day five, down the road." According to another law enforcement official: "The information has been active, useful, and we have been following up. The intelligence is not stale."

How did this happen? The Obama administration convinced Abdulmutallab's family to come to the United States. Then he started talking. His family persuaded him to cooperate.

This is a very different approach than we saw in the previous administration, when detainees who refused to talk were subjected to torture techniques such as waterboarding. Real life is not like the TV show "24." On TV, when Jack Bauer tortures someone, the suspect immediately admits everything he knows. Here is what we learned during the Bush administration: In real life, when people are tortured, they will say anything to make the pain stop. So they often provide false information, not valuable intelligence.

Richard Clarke was the senior counterterrorism adviser to President Clinton and President George W. Bush. Here is what he said recently about the Obama administration's approach: "The FBI is good at getting people to talk they have been much more successful than the previous attempts of torturing people and trying to convince them to give information that way."

Would Abdulmutallab's family have traveled to the United States and persuaded him to cooperate if they thought he was being tortured here? I do not think so. A senior Obama administration official said: "One of the principal reasons why his family came back is that they had complete trust in the U.S. system of justice and believed that [their son] would be treated fairly and appropriately."

You do not hear that much. There is a belief that if you do not waterboard a person or torture them, you are not going to get information. Exactly the opposite happened here. This man was treated respectfully through our system of justice. He was not given special favors. He was treated like the criminal who I believe he is, and yet he was treated in such a manner that his family was willing to come to the United States and beg him to cooperate with our government, which he did at the end of the day.

So how do my Republican colleagues respond to this development? Did they commend the Obama administration for successfully bringing his family over and getting more information? No. They now claim the intelligence from him was worthless. They have no basis for saying that, but they do anyway.

During the previous administration, Republicans argued that detainees held at Guantanamo were still providing valuable intelligence for years after they were arrested. Now they are saying that days and weeks after Abdulmutallab was arrested his intelligence was worthless. They cannot have it both ways.

Detaining Terrorist Suspects

My colleagues on the other side of the aisle argue that Abdulmutallab should be held in military detention as an enemy combatant. But terrorists arrested in the United States have always been held under our criminal laws. Here is what Attorney General Eric Holder said in his letter to Senator *McConnell*: “Since the September 11, 2001 attacks, the practice of the U.S. government, followed by prior and current Administrations without a single exception, has been to arrest and detain under federal criminal law all terrorist suspects who are apprehended inside the United States.”

Without exception. That was the standard under the Bush administration.

The Bush administration did move two terror suspects out of the criminal justice system after they were arrested. One of them was Jose Padilla. He was designated as an enemy combatant and transferred to military detention. But then what happened? In a court filing, the Bush administration admitted that Padilla had not talked to his interrogators for 7 months. They said: “There are numerous examples of situations where interrogators have been unable to obtain valuable intelligence from a subject until months--or even years, after the interrogation process began.”

Two important points about the Padilla case:

- My Republican colleagues criticize the Obama administration for holding Abdulmutallab under our criminal laws. But Padilla was held in military detention and the Bush administration acknowledged that he did not talk to his interrogators for at least 7 months.
- Second, Republicans argue that intelligence from Abdulmutallab, after several weeks in detention, was stale and worthless, but the Bush administration argued that information gathered from Padilla after months--or even years--was still valuable.

There is no consistency in the position they have taken on the other side of the aisle.

Trying Terrorist Suspects

In the end, the Bush administration changed course on Padilla. They transferred him back to the criminal justice system for prosecution. He was convicted. He is now serving a long sentence in a Federal supermax prison--convicted in our criminal courts.

What about the shoe bomber? Richard Reid was also prosecuted and convicted in the criminal justice system. He is now serving a life sentence without parole in a Federal supermax prison, where he will never again threaten an American life.

My Republican colleagues did not complain when the Bush administration prosecuted Reid and Padilla in criminal courts. But now they argue terrorists such as Abdulmutallab and Khalid Shaikh

Mohammed should be tried in military commissions only, because Federal courts are not well suited to prosecute terrorists.

Well, let's look at the numbers. Since 9/11, 195 terrorists have successfully been prosecuted and convicted in our Federal court system. Besides Reid and Padilla, here are just a few of the terrorists who have been convicted in our Federal court system and are now serving long prison sentences:

- Ramzi Yousef, the mastermind of the 1993 World Trade Center bombing;
- Omar Abdel Rahman, the so-called Blind Sheikh; and
- the 20th 9/11 hijacker, Zacarias Moussaoui, who was tried across the river in Virginia and now sits in a prison cell in Florence, CO.

Compare this with the track record of military commissions. Some would have us believe that military commissions have been so much more effective in going after terrorists. So let's look at the record.

Mr. President, 195 terrorists have been successfully prosecuted and convicted in our criminal courts. How about military commissions? Since 9/11, only three individuals have been convicted by military commissions--that is 195 to 3--and two of those individuals spent less than a year in prison and are now living freely in their home countries of Australia and Yemen.

GEN Colin Powell, the former head of the Joint Chiefs of Staff and Secretary of State under President Bush, supports prosecuting terrorists in Federal courts. Here is what he said about military commissions last week: "The suggestion that somehow a military commission is the way to go isn't borne out by the history of the military commissions."

What would GEN Colin Powell know about the history of military commissions? A heck of a lot, having given his life to the U.S. military in dedication to his country. His opinion means a lot to me.

Military commissions are unproven venues, which ultimately may serve us well in some circumstances, but to say they are all good and courts are all bad is to ignore the obvious and ignore the evidence.

Just 2 days ago, there was more compelling evidence about the effectiveness of Federal courts. Attorney General Holder announced that Najibullah Zazi has pleaded guilty to plotting to bomb the New York subway system. Zazi, who planned the bombing with al-Qaida while he was in Pakistan, could be sentenced to life in prison without parole--convicted in the Federal criminal courts.

Here is what Attorney General Holder said about the subway bombing plot:

"This is one of the most serious terrorist threats to our nation since September 11th, 2001 This attempted attack on our homeland was real, it was in motion, and it would have been deadly. In this case as in so many others, the criminal justice system has proved to be an invaluable weapon for disrupting plots and incapacitating terrorists."

I hope all my colleagues--Democrats and Republicans--will join me in commending the Obama administration for their success in disrupting this dangerous plot and bringing Zazi to justice. I sincerely hope this case will cause some of the critics of trying terrorists in Federal courts to pause to at least reflect on the obvious. This was a successful prosecution--another one, 195 of them since 9/11.

Politicizing National Security

There is a great irony here. For 8 long years, during the Bush-Cheney administration, Republicans used to argue that we should not criticize the administration's national security policies. Time and again, they told us it was inappropriate--maybe even un-American, some of them said--for Congress to ask basic questions about the Bush administration's policies on issues like Iraq, Guantanamo, torture, warrantless wiretapping. Time and again, we were reminded there is only one Commander-in-Chief. But now Republicans feel it is fair game to second-guess every decision President Obama makes in the area of combating terrorism.

I think we have a right, an obligation, as Senators, to ask questions of all Presidents regardless of party. But I think we also have an obligation for fairness and balance, as one of the notorious networks says. In this case, I think if you look at the evidence in a fair and balanced fashion, you can see we are in a situation where the approach of using Federal criminal courts has worked. It has worked because we know we have the very best in the FBI and the Department of Justice, and they have a track record of success. We have an obligation to get the facts right when we either defend or criticize the President.

I am also concerned about the tone of some of the criticism we have heard. We can surely disagree with this administration, but when I hear the President's critics suggest that he is soft on terrorism and he does not care about defending our country, that goes over the line, as far as I am concerned.

Recently, Senator *McConnell* gave a speech to the Heritage Foundation, a conservative think tank on Capitol Hill, and he said the Obama administration "has a pre-9/11 mindset" and "has a blind spot when it comes to prosecuting this war." I think those statements go too far.

GEN Colin Powell has a different opinion, different than Senator *McConnell*. Here is what he said last weekend: "To suggest that somehow we have become much less safe because of the actions of the administration, I don't think that's borne out by the facts."

What is the motivation for this criticism of the President? Well, as Senator *McConnell* said to the Heritage Foundation: "You can campaign on these issues anywhere in America."

I guess he is right. I guess there is always room for fear, and peddling fear is something that is going to appeal to a lot of people. It is right that we be mindful of the threat of terrorism and we do everything in our power to stop it from ever occurring again. But living and quivering in fear, is that what America should be all about?

Richard Clarke, the senior counterterrorism adviser to Presidents Clinton and Bush, said: "Recent months have seen the party out of power picking fights over the conduct of our efforts against Al Qaeda, often with total disregard to the facts and frequently blowing issues totally out of proportion, while ignoring the more important challenges we face in defeating terrorists."

Mr. President, 9 years after 9/11, al-Qaida still is a serious threat to America. We know that terrorists are plotting to attack us even as we speak. President Obama knows it as well. He understands as Commander in Chief that he has a special commitment to the American people to keep us safe.

Congress is a political body, and this is an election year, but this issue is too important to become a political football. Democrats and Republicans should be united in supporting all of the efforts of all of the good men and women, including the President, in trying to fight terrorism and keep America safe.

Mr. President, I yield the floor, and I suggest the absence of a quorum.