

HOW THE GOVERNMENT EXPLAINS UNINTERRUPTED ACCESS TO FAISAL SHAHZAD

Close to midnight on May 3, authorities arrested Faisal Shahzad for attempting to bomb Times Square.

Over the following two weeks, the authorities questioned Shahzad, even as Pakistani intelligence detained Shahzad's family members. The government told the press that Shahzad had waived his right to be charged in court and (though no one focused on this) a lawyer. Finally, on May 18, Shahzad appeared in Court and got a lawyer.

It turns out that on May 12, nine days after Shahzad was arrested, the US Attorney's office wrote a letter—which they requested remain sealed—to the Court, explaining Shahzad's status. Yesterday, they wrote a second letter asking that a redacted version of the first one be docketed.

The May 12 letter explains that each day that he was held, Shahzad waived his rights.

On May 4, 2010, subsequent to his arrest, the defendant, without counsel, knowingly and voluntarily waived his Miranda rights and executed a written waiver of speedy presentment. On each day since his arrest, the defendant has been re-advised of his Miranda rights and his right to speedy presentment, and on each day through and including the date of this letter he has executed a new written waiver of rights.

Note the focus here—not on his waiver to a

lawyer, per se, but Miranda rights and the right to appear in court more generally. All of which, of course, contribute to forgoing a lawyer.

Which is why the two redactions in the letter are of interest, as at least one appears to pertain to the government's uninterrupted access to him.

Since his arrest, the defendant has been questioned—and continues to be questioned—by federal agents on a number of sensitive national security and law enforcement matters for the purpose of preventing future attacks, identifying associates of the defendant and possible facilitators of the attempted attack, as well as gathering other actionable intelligence. [half paragraph redacted]

Federal law enforcement agents are vigorously and expeditiously pursuing leads relating to this and other information provided by the defendant, a process which has required the participation of hundreds of agents in different cities working around the clock since the defendant's arrest. **Uninterrupted access to the defendant has been, and continues to be, critical to this process, which requires, among other things, an ability to promptly verify with him the accuracy of information developed in the investigation.** [2 lines redacted] In short uninterrupted access has been, and continues to be, extremely beneficial, if not essential, to the investigation. [my emphasis]

The letter says nothing about what changed all this earlier this week. Nor does the May 19 letter explain whether the process (and the uninterrupted access) remained the same between May 12 and May 18. And neither letter includes Shahzad's daily waivers.

But what the May 12 letter does suggest, at the very least, is that one reason the government was happy that Shahzad had waived his rights (and, presumably, the reason they've suddenly embraced the idea of "modernizing" Miranda) is that they wanted to have 24/7 access to Shahzad.

Sort of makes you wonder how much sleep Shahzad got during the two weeks he was available 24/7 and didn't have a lawyer.