DICK AND THE NAKED SENATOR: WATERBOARDING BFFS

Breaking! (Not) Dick Cheney loves him some waterboarding.

> KARL: If you have somebody in custody like Abdulmutallab, after just trying to blow up an airliner, and you think he has information on another attack, I mean, do you think that those enhanced interrogation techniques should have been – should have been used? I mean, would you – do you think that he should have been, for instance, subject to everything, including waterboarding?
>
> CHENEY: Well, I think the – the professionals need to make that judgment. We've got people in – we had in our administration – I'm sure they're still there – many of them were career personnel – who are expects in this subject. And they are the ones that you ought to turn somebody like Abdulmutallab over to, let them be the judge of whether or not he's prepared to cooperate and how they can best achieve his cooperation.
>
> KARL: But you believe they should have had the option of everything up to and including waterboarding?
>
> CHENEY: I think you ought to have all of those capabilities on the table. Now, President Obama has taken them off the table. He announced when he came in last year that they would never use anything other than the U.S. Army manual, which doesn't include those techniques. I think that's a mistake.

Rather than focusing on Cheney's restatement of

his love for torture, I'd like to use the outrage about Cheney's calm embrace of waterboarding (again) to recall two other data points.

First, the guy Massachusetts just elected to replace Teddy Kennedy? He is just as big a fan of waterboarding as Dick Cheney.

> State Senator Scott Brown, the Republican candidate for US Senate, endorsed yesterday the use of enhanced interrogation techniques — including the practice of simulated drowning known as waterboarding — in questioning terror suspects.
>
> [snip]
>
> Brown, in response to a question, told reporters that Umar Farouk Abdulmutallab, 23, the Nigerian accused of trying to blow up a passenger jet en route to Detroit on Christmas Day, should be treated as an enemy combatant, taken to the US detention camp at Guantanamo Bay, Cuba, interrogated "pursuant to our rules of engagement and laws of war,'' and not be treated as a civilian criminal suspect. Brown asserted that waterboarding does not constitute torture, but he did not specifically say Abdulmutallab should be subjected to waterboarding.
>
> "I don't support torture; the United States does not support torture,'' Brown, a military lawyer in the Massachusetts National Guard, told reporters.

Yes, it's bad that the war criminal who set up our torture system continues to push torture on the Sunday shows. But don't forget that Senator Scott Brown, a JAG in MA's National Guard with the rank of Lieutenant Colonel, has several years of legislating ahead of him, and he supports torture just as proudly as Dick Cheney.

One more thing. See how Cheney claims that the "professionals" should make the decision about whether or not to waterboard someone? That may be true, in Cheney's mind, for terrorist suspects. But don't forget that Cheney's office personally intervened to try to have an Iraqi whom they believed would tie Iraq to 9/11 waterboarded.

> At the end of April 2003, not long after the fall of Baghdad, U.S. forces captured an Iraqi who Bush White House officials suspected might provide information of a relationship between al Qaeda and Saddam Hussein's regime. Muhammed Khudayr al-Dulaymi was the head of the M-14 section of Mukhabarat, one of Saddam's secret police organizations. His responsibilities included chemical weapons and contacts with terrorist groups.
>
> "To those who wanted or suspected a relationship, he would have been a guy who would know, so [White House officials] had particular interest," Charles Duelfer, head of the Iraqi Survey Group and the man in charge of interrogations of Iraqi officials, told me. So much so that the officials, according to Duelfer, inquired how the interrogation was proceeding.
>
> In his new book, *Hide and Seek: The Search for Truth in Iraq*, and in an interview with The Daily Beast, Duelfer says he heard from "some in Washington at very senior levels (not in the CIA)," who thought Khudayr's interrogation had been "too gentle" and suggested another route, one that they believed has proven effective elsewhere. "They asked if enhanced measures, such as waterboarding, should be used," Duelfer writes. "The executive authorities addressing those measures made clear that such techniques could legally be

> applied only to terrorism cases, and our debriefings were not as yet terrorism-related. The debriefings were just debriefings, even for this creature."
>
> Duelfer will not disclose who in Washington had proposed the use of waterboarding, saying only: "The language I can use is what has been cleared." In fact, two senior U.S. intelligence officials at the time tell The Daily Beast that **the suggestion to waterboard came from the Office of Vice President Cheney**. Cheney, of course, has vehemently defended waterboarding and other harsh techniques, insisting they elicited valuable intelligence and saved lives. He has also asked that several memoranda be declassified to prove his case. [my emphasis]

Cheney may now endorse, at least publicly, letting "the professionals" decide whether to torture someone or not. But back when he was trying to retroactively trump up some justification for the war in Iraq, the only thing that prevented us from using torture to produce propaganda for Cheney was the intervention of professionals.

OF COURSE BLUMENTHAL IS RUNNING AGAINST CIVILIAN LAW

Gregg has a post up expressing shock that Richard Blumenthal, CT's craven Attorney General running to replace Chris Dodd, advocated against using civilian law for both Khalid Sheikh

Mohammed and the UndieBomber, Umar Farouk Abdulmutallab. Gregg argues that Blumenthal's stance (on this issue and on opposition to Bernanke's reconfirmation) is directly counter to the Administration's policy.

To which I'd respond in two ways.

- Of course he's running against civilian law.
- It's not so clear his stance on civilian law (as opposed to Ben Bernanke) is "completely counter to the position of the administration."

Here's a big chunk from Gregg's post:

> But listen to what comes next—listen to this relative non sequitur that Blumenthal volunteers without a prompting question:
>
> > I'm determined to chart my own course in Washington, different in many respects from the Administration. I've taken the position that the trial of Khalid Sheik Mohammed should be in a military tribunal away from the United States, or, I'm sorry, away from New York and New Haven, and on a number of other issues, for example opposing the reconfirmation of Bernanke as chairman of the Federal Reserve, I have charted my own course, I'm prepared to do it, and issue-by-issue debate either side in what I think is the right thing to do.
>
> What this attorney general and former US attorney has to say about who supposedly

> is and is not entitled to their rights is pretty shocking,
>
> [snip]
>
> Yet, just over a year after the inauguration of this theoretically still popular president, the candidate for US Senate in Connecticut just went out of his way to distance himself from the White House on two hot issues—a civil trial for KSM and the reappointment of Ben Bernanke as Fed Chair.
>
> But wait, there's more.
>
> Blumenthal was next asked about whether Christmas crotch-bomber Umar Farouk Abdulmutallab should have been brought into the US criminal process, and the question turned to Miranda rights (I apologize in advance for the meandering quote, but I want to give the entire context):
>
> > Let's talk in real terms about what Mirandizing means. It means reading somebody their rights as opposed to simply interrogating them. I think there's a general consensus now that in that instance there may have been no real need to read Miranda rights before some interrogation took place. And, in my view, with a terrorist, with our nation potentially at risk, interrogation should be pursued, and the consequences may be that some evidence may be inadmissible, but there is obviously in that case, overwhelming evidence without whatever may be gained or gleaned from the interrogation. So, bottom line, interrogation should have been pursued by a specially trained group of

> > agents without necessarily a lawyer being present, and if at some point there was diminished usefulness to the interrogation, other criminal interrogation should have been applied perhaps by other authorities.
>
> Yes, this is utter garbage—in terms of what actually happened to Abdulmutallab, what Miranda rights actually are, and who is entitled to them by law—but stick with me:
>
> > Very often the reading of rights diminishes the usefulness of subsequent interrogation, the reason being simply that the defendant chooses to have a lawyer present, or chooses to cease talking. And I would have pursued the interrogation without the Miranda rights because I believe that the usefulness of learning about contacts from Yemen and elsewhere in the world and potential immediate attacks that may be known to this individual outweigh the benefits of having that at the trial
>
> Yes, more inaccuracies and inanities in search of a position, so questioner Lehrer wanted to clarify, should Abdulmutallab be tried in civilian court? “Probably not in criminal court,” says Blumenthal.
>
> Stupid, yes, but importantly here, also completely counter to the position of the administration of a president still thought popular in Dick’s state.

Now, as I suggested, it should surprise no one that a “finger-in-the-wind” politician like

Blumenthal is taking this stance against civilian law.

As I pointed out earlier this week, Scott Brown says he won in MA (which is slightly to the left of CT, if you look at it from my perspective) because he ran against civilian law.

> Republicans discovered the renewed power of terrorism in last month's special Senate election in Massachusetts. Neil Newhouse, the pollster for the Republican victor, Scott Brown, said **voters responded to the way Mr. Brown framed the issue, supporting him 63 percent to 26 percent when told he favored charging suspected terrorists as enemy combatants in a military tribunal while his Democratic opponent would give them constitutional rights and a civilian trial**.
>
> "This moved voters more than the health care issue did," Mr. Newhouse said. "The terrorism stuff resonated, and it wasn't just from the advertising we did." [my emphasis]

Scott Brown's pollster found that MA voters—voting to replace Ted Kennedy, of all people!!!—were more than twice as likely to support Brown for advocating against civilian law than Martha Coakley, the AG from the state next door to Blumenthal's, who supported it. Scott Brown won at least partly because he trashed civilian law (he even went so far as to endorse water-boarding explicitly, in MA, and still won).

And, as I also pointed out this week, in response to the lesson they took from the Brown win, Republicans are running hard against civilian law. "If this approach of putting these people in U.S. courts doesn't sell in Massachusetts, I don't know where it sells," Mitch McConnell told someone at a Heritage event on February 3. He went on to say, "You can

campaign on these issues anywhere in America."

Now, I agree with Mitch McConnell on approximately nothing policy-wise. But he's a smarter politician than a lot of guys on our side. And he, at least, believes "you can campaign" against civilian law "anywhere in the country." Including Massachusetts. And, presumably, Connecticut.

Which might explain why craven politicians like Richard Blumenthal are doing just that.

Now, onto my second point, Gregg's suggestion that Blumenthal, by campaigning against civilian law, is campaigning "completely counter to the position of the administration of a president still thought popular in Dick's state."

Is he?

After all, the White House was as heavy-handed in chasing Chris Dodd from this race—and finding a replacement—as they were in chasing candidates out of Michigan and Colorado's gubernatorial races. The White House has been intimately involved in this race. And the two guys at the White House who are likely most involved in this race—Rahm Emanuel and David Axelrod—are also the two guys who are at this moment dealing away civilian law like it's some kind of frivolous earmark only an insider would care about.

So while the guy in charge of our civilian legal system, Eric Holder, may cling to support of civilian law (though he appears to be ready to sacrifice that fight, anyway, at least in the case of KSM), the guys most involved in this race almost certainly don't give a shit about civilian law, and instead consider it as annoying as a pack of geese threatening to take down Obama's 747 full of more important (according to Rahm and Axe) agenda items.

So the lesson I would take from Blumenthal's craven disavowal of civilian law is not (just) that he's a craven politician. It's that the guys in charge of politics at the White House not only don't have the stomach for explaining

why civilian law is a better solution for both Abdulmutallab and KSM, but also that they're willing to accept the Republicans' framing of this issue.

Update: post organization tweaked and expanded slightly.

REPUBLICANS TRASHING LAW ENFORCEMENT BECAUSE IT POLLS WELL

The best explanation for why, after having been briefed that underwear bomber Umar Farouk Abdulmutallab was in FBI custody (and therefore, anyone who watches TV would know, mirandized), Republicans more recently started attacking the Obama Administration for having mirandized Abdulmutallab is this:

> Republicans discovered the renewed power of terrorism in last month's special Senate election in Massachusetts. Neil Newhouse, the pollster for the Republican victor, Scott Brown, said voters responded to the way Mr. Brown framed the issue, supporting him 63 percent to 26 percent when told he favored charging suspected terrorists as enemy combatants in a military tribunal while his Democratic opponent would give them constitutional rights and a civilian trial.
>
> "This moved voters more than the health care issue did," Mr. Newhouse said. "The terrorism stuff resonated, and it wasn't just from the advertising we did."

In fact, Mitch McConnell all but admitted that he was hitting the Administration on civilian

court issues because of Scott Brown's election in response to a question he was asked on February 3.

> "If this approach of putting these people in U.S. courts doesn't sell in Massachusetts, I don't know where it sells," he told a questioner.
>
> He added: "You can campaign on these issues anywhere in America."

That is, Republicans are attacking law enforcement—even as they have succeeded in getting Abdulmutallab's cooperation quicker than it took the torturers to get false information out of KSM—because it polls well, because Scott Brown won on a pro-waterboarding platform.

Here's the timeline:

December 25, 2009: Abdulmutallab attempts to bomb plane; after refusing to talk, FBI reads Miranda warning; John Brennan briefs Republican leadership that Abdulmutallab in FBI custody; FBI tells intelligence partners it will charge Abdulmutallab criminally, to no objections

December 26, 2009: FBI again tells intelligence partners it will charge Abdulmutallab criminally, to no objections

January 1, 2010: Two FBI agents fly to Nigeria to seek help from Abdulmutallab's family

January 4, 2010: Scott Brown embraces water-boarding, advocates trying Abdulmutallab in military commission

January 5, 2010: Administration considers, but rejects, possibility of treating Abdulmutallab as enemy combatant

January 7, 2010: Obama Administration releases report of what went wrong on terror attack

January 8-10. 2010: 57% surveyed prefer military commission to civilian trial

January 17, 2010: Two Abdulmutallab family

members fly back to Detroit to convince him to cooperate

January 19, 2010: Scott Brown wins special election

January 20, 2010: Joe Lieberman and Susan Collins hold hearing on Christmas bombing; Collins complains about information sharing, not Miranda warning; Blair says not consulted before Miranda read, says new interrogation team should have made decision though it is not yet functional

Several days after his family arrives: Abdulmutallab begins to cooperate

January 25, 2010: Lieberman and Collins write letter attacking FBI for giving Miranda warning

January 27, 2010: Mitch McConnell and others write Holder complaining about Miranda warning

January 30, 2010: Susan Collins attacks Obama for Miranda warning in weekly radio address

February 2, 2010: Mueller tells SSCI Abdulmutallab is cooperating

February 3, 2010: Holder responds to Republican critics; Mitch McConnell attacks “law enforcement” approach and later admits it works in campaigns, mentioning Brown’s victory

February 7, 2010: John Brennan reveals that Republican leaders briefed on FBI custody for Abdulmutallab, made no objections

February 9, 2010: John Brennan writes op-ed, “We need no lectures.”

AND NOW THEY'RE

DISCLAIMING RESPONSIBILITY FOR THEIR BRIEFINGS

Surprise, surprise. Just days after Crazy Pete Hoekstra did what Crazy Pete Hoekstra attacked Nancy Pelosi for last year—accused the CIA of lying—he's now caught in another position he has criticized Pelosi for—not objecting in a briefing to an Administration policy he subsequently claimed to be vehemently opposed to. On Meet the Press this morning, John Brennan revealed that he briefed the Republican members of the Gang of Eight about the treatment of underwear bomber Umar Farouk Adbulmutallab (this is already an improvement on Bush policy, since they usually only briefed the Gang of Four). And they didn't raise any objections to the planned treatment of him.

> The Obama administration briefed four senior Republican congressional leaders on Christmas about the attempted terrorist attack on a Detroit-bound flight.
>
> White House counterterrorism chief John Brennan said that Senate Minority Leader Mitch McConnell (R-Ky.), House Minority Leader John Boehner (R-Ohio), Sen. Kit Bond (R-Mo.) and Rep. Pete Hoekstra (R-Mich.) did not raise any objections to bombing suspect Umar Farouk Abdulmutallab being held in FBI custody.
>
> "They knew that in FBI custody there is a process that you follow. None of those individuals raised any concerns with me at this point," Brennan said on NBC's "Meet the Press." "They were very appreciative of the information."

The Republicans are, predictably, claiming they didn't know that normal FBI procedure includes mirandizing suspects, claiming that it wasn't a

real briefing—anything to sustain their efforts to politicize national security.

Meanwhile, I'm not holding my breath waiting for the press to call these Republicans on their excuses about the briefing or, more importantly, on their raging hypocrisy. After all, last year the press was able to sustain itself for several months over Crazy Pete's attack on Nancy Pelosi for this (even while Crazy Pete's attack was factually wrong). But somehow they seem to lose interest when someone like Crazy Pete gets exposed, for the second time in a week, as a raging hypocrite.

WHERE WILL BRENNAN LAND IN RAHM V. DOJ SPAT?

As Jason notes, David Axelrod has already taped a CSPAN response to Jane Mayer's piece on Rahm's spat about distractions like "the law" and "human rights" with Eric Holder and Greg Craig. In it, Axe appears to try to distance the White House from the decisions that have been attacked in the last few weeks, particularly the decision to try Khalid Sheikh Mohammed in New York.

> David Axelrod did not dispute that a rift had emerged between the White House and the Justice Department over the 9/11 case, which has recently become a political sore spot for the administration.Despite a rising tide of opposition to having a trial in Manhattan, which has sent the administration scrambling to find another location, Axelrod said it was not a mistake for Holder to announce the trial would be held there. **But Axelrod did not defend it — or portray it in any**

> **way as a decision that came from the White House. "The attorney general was responding under the protocol that was developed between the Department of Justice and the Department of Defense for the prosecution of terrorists,"** Axelrod said in an interview for C-SPAN's "Newsmakers" series set to air on Sunday.
>
> Acknowledging White House resistance to the Justice Department decisions, Axelrod continued: "Rahm has a perspective that's different. He's the chief of staff. He looks at things from a legislative perspective, he looks at things from other perspectives."

Side note: Responsible journalism would dictate that Anne Kornblut avoid the metonymy of "White House" here, as it obscures whether this is just Axe and Rahm working the press as they do, or Obama as well. After all, if Obama has decided to give Holder autonomy on this decision, he has, in fact, supported such a decision, or should have. But therein may be the real root of White House dysfunction on this issue.

So Rahm and Axe are out there declaring that the decision to try KSM in a civilian trial in NY belongs entirely to DOJ and DOD, which Axe appears to portray as somehow divorced from the authority and will of the White House (and therefore, from Obama). In the likelihood that the trial will be moved to some other venue altogether, then, Axe and Rahm can continue to make Holder the scapegoat. Heck, they may even be trying to force Holder out like they have forced Craig out.

But what's going to happen when the White House strongly owns its decisions on the handling of the Underwear Bomber? They've got John Brennan on Meet the Press tomorrow to defend the Administration's decisions on his treatment. As Mark Ambinder tweets,

> Admin puts Brennan on Sunday shows to defend Abdulmuttalab's handling. He is steaming mad about the CW.

Whatever my complaints with Brennan, he does come off as less of a backroom bumbler than Rahm and Axe of late. And he plans to go on TV and rebut the conventional wisdom about the decision to mirandize Umar Farouk Abdulmutallab and try him in civilian court.

In other words, Brennan will be making the same defense of civilian law as Eric Holder has. Maybe, in the process, he'll explain how Abdulmutallab's testimony has already led the White House to put Anwar al-Awlaki on a kill list, just to look tough in the process!

So it seems that as Rahm and Axe try to set up and scapegoat Holder, one of the grownups is about to go on TV and own not the KSM decision, but certainly the decision to sustain our system of civilian law.

ASSASSINATION PERMISSION SLIPS AND HALL PASSES

Yesterday, Dennis Blair gave the House Intelligence Committee an explanation of the "specially permission" that the Government grants itself before it places a US citizen on its kill list.

> The U.S. intelligence community policy on killing American citizens who have joined al Qaeda requires first obtaining high-level government approval, a senior official disclosed to Congress on Wednesday.

> Director of National Intelligence Dennis C. Blair said in each case a decision to use lethal force against a U.S. citizen must get special permission.
>
> "We take direct actions against terrorists in the intelligence community," he said. "If we think that direct action will involve killing an American, we get specific permission to do that."
>
> He also said there are criteria that must be met to authorize the killing of a U.S. citizen that include "whether that American is involved in a group that is trying to attack us, whether that American is a threat to other Americans. Those are the factors involved."

If you haven't already, you should read Glenn Greenwald's entire piece on why this stance violates US law. Here's Glenn's description of the legal background.

> The severe dangers of vesting assassination powers in the President are so glaring that even GOP Rep. Pete Hoekstra is able to see them (at least he is now that there's a Democratic President). At yesterday's hearing, Hoekstra asked Adm. Blair about the threat that the President might order Americans killed due to their Constitutionally protected political speech rather than because they were actually engaged in Terrorism. This concern is not an abstract one. The current controversy has been triggered by the Obama administration's attempt to kill U.S. citizen Anwar al-Awlaki in Yemen. But al-Awlaki has not been accused (let alone convicted) of trying to attack Americans. Instead, he's accused of being a so-called "radical cleric" who supports Al Qaeda and now

> provides "encouragement" to others to engage in attacks — **a charge al-Awlaki's family vehemently denies** (al-Awlaki himself is in hiding due to fear that his own Government will assassinate him).
>
> The question of where First Amendment-protected radical advocacy ends and criminality begins is exactly the sort of question with which courts have long grappled. In the 1969 case of *Brandenburg v. Ohio*, the Supreme Court unanimously reversed a criminal conviction of a Ku Klux Klan leader who — surrounded by hooded indivduals holding weapons — gave a speech threatening "revengeance" against any government official who "continues to suppress the white, Caucasian race." The Court held that the First Amendment protects advocacy of violence and revolution, and that the State is barred from punishing citizens for the expression of such views. The *Brandenburg* Court pointed to a long history of precedent protecting the First Amendment rights of Communists to call for revolution — even violent revolution — inside the U.S., and explained that the Government can punish someone for violent **actions** but not for speech that merely advocates or justifies violence (emphasis added):
>
> > As we [395 U.S. 444, 448] said in Noto v. United States, 367 U.S. 290, 297 -298 (1961), "**the mere abstract teaching . . . of the moral propriety or even moral necessity for a resort to force and violence, is not the same as preparing a group for violent action and steeling it to such action.**" See also Herndon v. Lowry, 301 U.S. 242, 259 -261 (1937); Bond v. Floyd,

> > 385 U.S. 116, 134 (1966). A statute which fails to draw this distinction **impermissibly intrudes upon the freedoms guaranteed by the First and Fourteenth Amendments.** It sweeps within its condemnation speech which our Constitution has immunized from governmental control.
>
> From all appearances, al-Awlaki seems to believe that violence by Muslims against the U.S. is justified in retaliation for the violence the U.S. has long brought (and continues to bring) to the Muslim world. But as an American citizen, he has the absolute Constitutional right to express those views and not be punished for them (let alone killed) no matter where he is in the world; it's far from clear that he has transgressed the advocacy line into violent action.

I want to go back to just one more problem with this whole state of affairs.

We have been focusing all of our powers of telecom surveillance on Anwar al-Awlaki for at least a year (and probably far longer). Our government has tracked not only what he has said on jihadist websites, but also knows precisely what he has been emailing and presumably saying on the phone.

But none of that stuff, before Christmas Day, even merited an indictment.

And then—perhaps only because of the testimony from Umar Farouk Abdulmutallab that Republicans have shrieked for weeks was inadequate—the Government moved from having no charges against al-Awlaki to attempting to assassinate him. All at a time when we've increasaed our presence in and cooperation with Yemen (so therefore, presumably also our ability to extradite someone

from Yemen).

Glenn’s point is important because it appears the government agrees with him on the First Amendment point: all of the speech al-Awlaki has engaged in for the last decade was not deemed worthy of even a criminal indictment. Yet all of a sudden, it got al-Awlaki on the kill list.

The process by which that happened must be transparent to the American people.

HOLDER TO REPUBLICANS: STOP BEING SUCH WATBS ABOUT MIRANDA WARNINGS AND MUKASEY'S DECISIONS

Eric Holder just sent the following letter to a bunch of whiny Republican Senators trying to make an issue about Americans respecting the rule of law. (I’m posting the whole thing bc there’s a lot of excellent smack down in it.)

Dear Senator McConnell:

I am writing in reply to your letter of January 26,2010, inquiring about the decision to charge Umar Farouk Abdulmutallab with federal crimes in connection with the attempted bombing of Northwest Airlines Flight 253 near Detroit on December 25, 2009, rather than detaining him under the law of war. An identical response is being sent to the other Senators who joined in your letter.

The decision to charge Mr. Abdulmutallab in

federal court, and the methods used to interrogate him, are fully consistent with the long-established and publicly known policies and practices of the Department of Justice, the FBI, and the United States Government as a whole, as implemented for many years by Administrations of both parties. Those policies and practices, which were not criticized when employed by previous Administrations, have been and remain extremely effective in protecting national security. They are among the many powerful weapons this country can and should use to win the war against al-Qaeda.

I am confident that, as a result of the hard work of the FBI and our career federal prosecutors, we will be able to successfully prosecute Mr. Abdulmutallab under the federal criminal law. I am equally confident that the decision to address Mr. Abdulmutallab's actions through our criminal justice system has not, and will not, compromise our ability to obtain information needed to detect and prevent future attacks.

There are many examples of successful terrorism investigations and prosecutions, both before and after September 11, 2001, in which both of these important objectives have been achieved – all in a manner consistent with our law and our national security interests. Mr. Abdulmutallab was questioned by experienced counterterrorism agents from the FBI in the hours immediately after the failed bombing attempt and provided intelligence, and more recently, he has provided additional intelligence to the FBI that we are actively using to help protect our country. We will continue to share the information we develop with others in the intelligence community and actively follow up on that information around the world.

1. Detention. I made the decision to charge Mr. Abdulmutallab with federal crimes, and to seek his detention in connection with those charges, with the knowledge of, and with no objection from, all other relevant departments ofthe

government. On the evening of December 25 and again on the morning of December 26, the FBI informed its partners in the Intelligence Community that Abdulmutallab would be charged criminally, and **no agency objected to this course of action**. In the days following December 25 – including during a meeting with the President and other senior members of his national security team on January 5 – high-level discussions ensued within the Administration in which the possibility of detaining Mr. Abdulmutallab under the law of war was explicitly discussed. **No agency supported the use of law of war detention for Abdulmutallab, and no agency has since advised the Department of Justice that an alternative course of action should have been, or should now be, pursued**.

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. The prior Administration adopted policies expressly endorsing this approach. **Under a policy directive issued by President Bush in 2003, for example, "the Attorney General has lead responsibility for criminal investigations of terrorist acts or terrorist threats by individuals or groups inside the United States, or directed at United States citizens or institutions abroad, where such acts are within the Federal criminal jurisdiction of the United States, as well as for related intelligence collection activities within the United States."** Homeland Security Presidential Directive 5 (HSPD-5, February 28,2003). The directive goes on to provide that "(following a terrorist threat or an actual incident that falls within the criminal jurisdiction of the United States, the full capabilities of the United States shall be dedicated, consistent with United States law and with activities of other Federal departments and agencies to protect our national security, to assisting the Attorney General to identify the perpetrators

and bring them to justice."

In keeping with this policy, the Bush Administration used the criminal justice system to convict more than 300 individuals on terrorism-related charges. For example, Richard Reid, a British citizen, was arrested in December 2001 for attempting to ignite a shoe bomb while on a flight from Paris to Miami carrying 184 passengers and 14 crewmembers. He was advised of his right to remain silent and to consult with an attorney within five minutes of being removed from the aircraft (and was read or reminded of these rights a total of four times within 48 hours), pled guilty in October 2002, and is now serving a life sentence in federal prison. In 2003, Iyman Faris, a U.S. citizen from Pakistan, pled guilty to conspiracy and providing material support to al- Qaeda for providing the terrorist organization with information about possible U.S. targets for attack. Among other things, he was tasked by al-Qaeda operatives overseas to assess the Brooklyn Bridge in New York City as a possible post-9/11 target of destruction. After initially providing significant information and assistance to law enforcement personnel, he was sentenced to 20 years in prison. In 2002, the "Lackawanna Six" were charged with conspiring, providing, and attempting to provide material support to al-Qaeda based upon their pre-9/11 travel to Afghanistan to train in the Al Farooq camp operated by al-Qaeda. They pled guilty, agreed to cooperate, and were sentenced to terms ranging from seven to ten years in prison. There are many other examples of successful terrorism prosecutions – ranging from Zacarias Moussaoui (convicted in 2006 in connection with the 9/11 attacks and sentenced to life in prison) to Ahmed Omar Abu Ali (convicted in 2005 of conspiracy to assassinate the President and

other charges and sentenced to life in prison) to Ahmed Ressam (convicted in 2001 for the Millenium plot to bomb the Los Angeles airport and sentenced to 22 years, a sentence recently reversed as too lenient and remanded for

resentencing) –which I am happy to provide upon request.

In fact, two (and only two) persons apprehended in this country in recent times have been held under the law of war. Jose Padilla was arrested on a federal material witness warrant in 2002, and was transferred to law of war custody approximately one month later, after his court-appointed counsel moved to vacate the warrant. Ali Saleh Kahlah AI-Marri was also initially arrested on a material witness warrant in 2001, was indicted on federal criminal charges (unrelated to terrorism) in 2002, and then transferred to law of war custody approximately eighteen months later. **In both of these cases, the transfer to law of war custody raised serious statutory and constitutional questions in the courts concerning the lawfulness of the government's actions and spawned lengthy litigation. In Mr. Padilla's case, the United States Court of Appeals for the Second Circuit found that the President did not have the authority to detain him under the law of war**. In Mr. AI-Marri's case, the United States Court of Appeals for the Fourth Circuit reversed a prior panel decision and found in a fractured en bane opinion that the President did have authority to detain Mr. Al Marri, but that he had not been afforded sufficient process to challenge his designation as an enemy combatant. **Ultimately, both AI-Marri (in 2009) and Padilla (in 2006) were returned to law enforcement custody, convicted of terrorism charges and sentenced to prison**.

When Flight 253 landed in Detroit, the men and women of the FBI and the Department of Justice did precisely what they are trained to do, what their policies require them to do, and what this nation expects them to do. In the face of the emergency, they acted quickly and decisively to ensure the detention and incapacitation of the individual identified as the would-be bomber. They did so by following the established practice and policy of prior and current Administrations, and detained Mr. Abdulmutallab

for violations of federal criminal law.

2. Interrogation. The interrogation of Abdulmutallab was handled in accordance with FBI policy that has governed interrogation of every suspected terrorist apprehended in the United States for many years. 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. The FBI's current Miranda policy, adopted during the prior Administration, I provides explicitly that "[w]ithin the United States, Miranda warnings are required to be given prior to custodial interviews. . . .,,2 In both terrorism and non-terrorism cases, the widespread experience of law enforcement agencies, including the FBI, is that many defendants will talk and cooperate with law enforcement agents after being informed of their right to remain silent and to consult with an attorney. Examples include L'Houssaine Kherchtou, who was advised of his Miranda rights, cooperated with the government and provided critical intelligence on al-Qaeda, including their interest in using piloted planes as suicide bombers, and Nuradin Abdi, who provided significant information after being repeatedly advised of his Miranda rights over a two week period.

During an international terrorism investigation regarding Operation Crevice, law enforcement agents gained valuable intelligence regarding al-Qaeda military commanders and suspects involved in bombing plots in the U.K. from a defendant who agreed to cooperate after being advised of, and waiving his Miranda rights. Other terrorism subjects cooperate voluntarily with law enforcement without the need to provide Miranda warnings because of the non-custodial nature of the interview or cooperate after their arrest and agree to debriefings in the presence of their attorneys. Many of these subjects have provided vital intelligence on al-Qaeda,

including several members of the Lackawanna Six, described above, who were arrested and provided information about the Al Farooq training camp in Afghanistan; and Mohammad Warsame, who voluntarily submitted to interviews with the FBI and provided intelligence on his contacts with al- Qaeda in Afghanistan. There are other examples which I am happy to provide upon request. There are currently other terrorism suspects who have cooperated and are providing valuable intelligence information whose identities cannot be publicly disclosed.

The initial questioning of Abdulmutallab was conducted without Miranda warnings under a public safety exception that has been recognized by the courts.

Subsequent questioning was conducted with Miranda warnings, as required by FBI policy, after consultation between FBI agents in the field and at FBI Headquarters, and career prosecutors in the U.S. Attorney's Office and at the Department of Justice. Neither advising Abdulmutallab of his Miranda rights nor granting him access to counsel prevents us from obtaining intelligence from him, however. On the contrary, history shows that the federal justice system is an extremely effective tool for gathering intelligence. The Department of Justice has a long track record of using the prosecution and sentencing process as a lever to obtain valuable intelligence, and we are actively deploying those tools in this case as well.

Some have argued that had Abdulmutallab been declared an enemy combatant, the government could have held him indefinitely without providing him access to an attorney. But the government's legal authority to do so is far from clear. **In fact, when the Bush administration attempted to deny Jose Padilla access to an attorney, a federal judge in New York rejected that position, ruling that Padilla must be allowed to meet with his lawyer. Notably, the judge in that case was Michael Mukasey, my predecessor as Attorney General.** In

fact, there is no court-approved system currently in place in which suspected terrorists captured inside the United States can be detained and held without access to an attorney; nor is there any known mechanism to persuade an uncooperative individual to talk to the government that has been proven more effective than the criminal justice system. Moreover, while in some cases defense counsel may advise their clients to remain silent, there are situations in which they properly and wisely encourage cooperation because it is in their client's best interest, given the substantial sentences they might face.

3. The Criminal Justice System as a National Security Tool. As President Obama has made clear repeatedly, we are at war against a dangerous, intelligent, and adaptable enemy. Our goal in this war, as in all others, is to win. Victory means defeating the enemy without damaging the fundamental principles on which our nation was founded. To do that, we must use every weapon at our disposal. Those weapons include direct military action, military justice, intelligence, diplomacy, and civilian law enforcement. Each of these weapons has virtues and strengths, and we use each of them in the

appropriate situations.

Over the past year, we have used the criminal justice system to disrupt a number of plots, including one in New York and Colorado that might have been the deadliest attack on our country since September 11, 2001, had it been successful. The backbone of that effort is the combined work of thousands of FBI agents, state and local police officers, career prosecutors, and intelligence officials around the world who go to work every day to help prevent terrorist attacks. I am immensely proud of their efforts. At the same time, we have worked in concert with our partners in the military and the Intelligence Community to support their tremendous work to defeat the terrorists and with our partners overseas who have great faith

in our criminal justice system.

The criminal justice system has proven to be one of the most effective weapons available to our government for both incapacitating terrorists and collecting intelligence from them. Removing this highly effective weapon from our arsenal would be as foolish as taking our military and intelligence options off the table against al-Qaeda, and as dangerous. In fact, only by using all of our instruments of national power in concert can we be truly effective. As Attorney General, I am guided not by partisanship or political considerations, but by a commitment to using the most effective course of action in each case, depending on the facts of each case, to protect the American people, defeat our enemies, and ensure the rule of law.

I The Domestic Investigations and Operations Guide (DIOG) was finalized on December 16,2008. It is the FBI's manual implementing the Attorney General's Guidelines for Domestic FBI Operations, which were issued by Attorney General Mukasey on September 29, 2008.

2 FBI policy also reminds agents that "[t]he warning and waiver of rights is not required when questions which are reasonably prompted by a concern for public safety are asked. For example, if Agents make an arrest in public shortly after the commission of an armed offense, and need to make an immediate inquiry to determine the location of the weapon, such questions may be asked, even of an in-custody suspect, without first advising the suspect of [his Miranda rights]." FBI Legal Handbook for Special Agents § 7- 3.2(6). The public-safety exception to Miranda v. Arizona, 384 U.S. 436 (1966), was recognized by the Supreme Court in New York v. Quarles, 467 U.S. 649 (1984).

BREAKING! A MONTH OF INTERROGATION WORKS BETTER THAN WATERBOARDING SOMEONE 183 TIMES

As Admiral Mullen just testified to Congress, Underwear Bomber Umar Abdulmutallab has been cooperating with the FBI.

The blood-thirsty right, of course, has been screaming all month that Abdulmutallab wasn't taken immediately to a military facility to be ~~tortured~~ interrogated harshly.

That blood-thirst has always felt rather weird to me. Unlike all the others that the torture industry has made an exhaustive effort to sufficiently dehumanize such that we (or rather they) could all cheer torture, I have a tougher time doing that with Abdulmutallab. I know that Abdulmutallab is at this very minute less than twenty miles away from me (and for two days, he was just a few miles from my house). And even with that proximity, he just doesn't feel like that big a threat to me right now.

Maybe that's one reason they've been screaming for his torture, to make sure we don't start to normalize the thought of these people in normal prisons.

Or maybe, they wanted to prevent precisely what has occurred. That is, in response to—presumably—normal FBI interrogation, Abdulmutallab has resumed cooperating with investigators.

They didn't need to waterboard him!

Surprise, surprise. A month of interrogation works better than a month of waterboarding.

LAT: THE CIA HASN'T YET ADDED AL-AWLAKI TO ITS KILL LIST

The most interesting thing about Greg Miller's story on whether Anwar al-Awlaki has been added to the CIA's list of assassination targets is how it differs from the two stories already written on this subject. Miller says that al-Awlaki has not yet been added to the list.

> No U.S. citizen has ever been on the CIA's target list, which mainly names Al Qaeda leaders, including Osama bin Laden, according to current and former U.S. officials. But that is expected to change as CIA analysts compile a case against a Muslim cleric who was born in New Mexico but now resides in Yemen.
>
> Anwar al Awlaki poses a dilemma for U.S. counter-terrorism officials. He is a U.S. citizen and until recently was mainly known as a preacher espousing radical Islamic views. But Awlaki's ties to November's shootings at Ft. Hood and the failed Christmas Day airline plot have helped convince CIA analysts that his role has changed.

That accords with what ABC reported on January 25.

> White House lawyers are mulling the legality of proposed attempts to kill an American citizen, Anwar al Awlaki, who is believed to be part of the leadership of the al Qaeda group in Yemen behind a series of terror strikes, according to two people briefed by U.S. intelligence officials.

> One of the people briefed said opportunities to "take out" Awlaki "may have been missed" because of the legal questions surrounding a lethal attack which would specifically target an American citizen.

But not with what Dana Priest wrote on January 27.

> Both the CIA and the JSOC maintain lists of individuals, called "High Value Targets" and "High Value Individuals," whom they seek to kill or capture. The JSOC list includes three Americans, including Aulaqi, whose name was added late last year. ~~As of several months ago, the CIA list included three U.S. citizens, and an intelligence official said that Aulaqi's name has now been added~~. [Update, February 17, 2010: WaPo has since retracted the report that CIA had US citizens on its kill list.]

I'd suggest Priest's initial focus on JSOC (though Miller, too, confirms that al-Awlaki is on JSOC's list) may explain this flurry of articles describing the government's ultra-secret kill list(s). That is, Priest's focus on JSOC may suggest the long-brewing turf war between JSOC and CIA on such issues is bubbling up to the surface. That also might explain the spin of the other two article. ABC's article seems designed to force someone's hand by painting the CIA as incompetent for missing al-Awlaki in the past. And it might explain CIA spokesperson Paul Gimigliano's snippiness about the public nature of this debate.

> CIA spokesman Paul Gimigliano declined to comment, saying that it is "remarkably foolish in a war of this kind to discuss publicly procedures used to identify the enemy, an enemy who wears no uniform and relies heavily on stealth and deception."

Now, whatever the differences in the article Miller doesn't appear to have asked some of the obvious questions any more than Priest or ABC. If we haven't even tried indicting al-Awlaki yet (particularly with all the increased presence we've got in Yemen to pick him up), then how do we have enough information to assassinate him? And why didn't our vaunted surveillance system pick up this apparently growing threat from al-Awlaki?

As to what new information has come up to merit al-Awlaki's placement on the kill list (whether CIA's or JSOC's)?

> But it was his involvement in the two recent cases that triggered new alarms. U.S. officials uncovered as many as 18 e-mails between Awlaki and Nidal Malik Hasan, a U.S. Army major accused of killing 13 people at Ft. Hood, Texas. Awlaki also has been tied to Umar Farouk Abdulmutallab, the Nigerian accused of attempting to detonate a bomb on a Detroit-bound flight.

At least on first report, the emails were not sufficiently damning to concern the FBI. Has that changed? And the phrase "Awlaki has been tied"—you're going to put someone on a kill list using a passive construction? Really?

AN INTERESTING FEW DAYS FOR AL-AWLAKI

How is it that the government has enough detail to put Anwar al-Awlaki onto the assassination list, but didn't have enough to anticipate at least the Underwear Bomber attempted attack?