mercury. If he can have an endangerment finding saying that CO_2 can be considered to be a pollutant, we can regulate it and do it through regulation.

I personally asked in a public hearing, live on TV, Lisa Jackson, Administrator of the EPA, I said: If you do an endangerment finding—which they have now done, but this is before then—is it accurate to say that is based on the science of the EIPC?

She said yes.

Now we have an endangerment finding based on science totally discredited, on the IPCC. I have no doubt in my mind that once March gets here and lawsuits start getting filed, the courts are going to look at this and say: Wait a minute. An endangerment finding that is going to totally change the United States of America is based on science that has been refuted in the last few months.

This is very serious. It is something that could be very expensive for America. I invite all my colleagues here, Democrats and Republicans, to look and see what Climategate is all about, what Amazongate is all about, what Glaciergate is all about. Cooked science has come up with the conclusion we are now experiencing global warming, and it is due to anthropogenic gases.

I yield the floor. I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HARKIN. Madam President, I ask unanimous consent the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mrs. SHAHEEN). Without objection, it is so ordered.

The Senator from Iowa is recognized.

Mr. HARKIN. I thank the Chair.

(The remarks of Mr. HARKIN pertaining to the submission of S. Res. 416 are located in today's RECORD under ''Submitted Resolutions.'')

The PRESIDING OFFICER. The Senator from Missouri is recognized.

Mr. BOND. I thank my colleagues on the other side of the aisle. I believe there is a UC that the assistant majority leader wishes to make.

ORDER OF PROCEDURE

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Madam President, I have spoken to the Senators from Missouri and Alabama, and I ask unanimous consent that following the remarks of the Senator from Missouri I be recognized for 10 minutes, and then following that, Senator SESSIONS be recognized for 10 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Missouri.

TERROR FIGHTING POLICY

Mr. BOND. Madam President, I thank the Chair and all of my friends for giving me this opportunity to speak.

For Americans, the world changed on September 11, 2001. We learned—at the cost of thousands of innocent lives—that treating terrorism as a law enforcement matter won't keep Americans safe.

My real concern is that this administration doesn't understand that every day now is like September 12. We cannot afford to revert back to a 9/11 mentality. Instead, we need to treat the terrorists as what they are—not common criminals but enemy combatants in a war.

I rise today to speak about my concerns with current terror-fighting policies of this administration and the vital importance of congressional oversight. Protecting this Nation from terrorist attack is our highest duty in government. In our great democracy, congressional oversight plays a critical role in ensuring that our government protects our citizens from terror attacks. Unfortunately, some in the White House don't agree.

Just this morning, a White House spokesperson on MSNBC charged that ''politicians in Congress'' should keep their opinions to themselves when it comes to one of our most vital national security interests—counterterrorism. I note in the previous administration, my colleagues on the other side of the aisle were quite free to speak about their views on the policies. Mr. Brennan, the Homeland Security adviser, wrote an editorial in USA TODAY critical of congressional criticism of the administration's counterterrorism policies and called them fearmongering that serve the goals of al-Qaida.

I welcome comments of substance from the administration and from the other side on the criticism and the points I make, but you are not going to be able to silence the legislative branch. To do so is unworthy of the democracy we defend. One might believe that some were trying to shift attention away from the decisions that were made in recent years.

The bottom line is that my real beef is not with the White House spokespeople—although it is disappointing when the National Security Adviser claims that I have not told the truth about what he said—but with the dangerous policies of the administration. Clearly, my complaints are not directed at the men and women of the intelligence community—which was an insinuation by the White House spokesperson—because I believe the men and women of the intelligence community are doing their very best job under at best difficult circumstances. What I am concerned about is major broader policies over which they have no control have been changed in a way to make their job more difficult, and we should not be making their job more difficult.

One of the dangerous cases of ''ready, fire, aim'' and national security policies was the President's pledge to close the terrorist detention facility at Guantanamo Bay without any backup plans for the deadly terrorists housed there or how to handle them or how to treat them. There has been a temporary suspension of transfers of Gitmo detainees to Yemen and Saudi Arabia, but we understand the larger effort to transfer and release other dangerous Gitmo detainees continues.

Let me be clear. The previous administration released terrorists and sent them back to their homeland, some for rehabilitation, and 20 percent of them—1 out of 5—have returned to the battlefield and a couple of them apparently were coaching and training the ''Underpants Bomber.'' That was a big mistake. Stop making the mistakes. We can learn from the mistakes we have made in the past. If we send more back, they will be attempting to kill more Americans. We shouldn't compromise our security here at home and the lives of our soldiers overseas to carry out a campaign promise. If a campaign promise doesn't square with national security, I humbly suggest that national security should prevail.

There is another case, the administration's decision to end or to bypass military commissions for detainees who are ready to plead guilty, as Khalid Sheikh Mohammed was, to move him to New York City for the show trial. I will address that later. But the administration continues to prepare to try senior al-Qaida detainees in U.S. article III criminal courts rather than the military commissions that Congress designed for these difficult and complicated cases, to be used in a courtroom that we constructed at Gitmo.

History has shown that civil criminal trials of terrorists unnecessarily hemorrhage sensitive classified information. The East Africa Embassy bombing trials made Osama bin Laden aware of cell phone intercepts, and surprisingly al-Qaida and Osama bin Laden started using different methods of communications. The trial of the first World Trade Center bomber Ramzi Yousef tipped off terrorists to another communications link that provided enormously valuable information. Well, their use of that link that we were able to compromise was shut down because they learned about it. Similarly, the trial of the ''Blind Sheik'' Omar Abdel Rahman provided intelligence to Osama bin Laden. The trial of Zacarias Moussaoui resulted in the inadvertent disclosure of sensitive material. That is why former Attorney General Michael Mukasey, who tried some of these cases, said you cannot prevent a defense attorney from getting classified, highly confidential information in the course of an article III criminal trial. We know for a fact these civilian trials have aided the terrorists by giving them information on our Intelligence Committee.

The military commission system—and we passed a measure to regulate

the sign-in law in 2009—was designed to protect our sensitive intelligence sources and methods and to comply with the laws of war. Why abandon them? It will come as no surprise to my colleagues that I also disagree with the administration's ''ready, fire, aim'' strategy of handling the Christmas Day bomber.

On December 25, when Abdulmutallab landed on our shores, rather than incorporate intelligence into his interrogation, he was, after 50 minutes of brief questioning, Mirandized and offered a lawyer. Not surprisingly, he clammed up for 5 weeks. Intelligence is perishable and that 5 weeks was time that our intelligence system should have been operating on the questions he was only 5 weeks later answering. I don't know what purpose there was in Mirandizing him. That is an exclusionary rule. The only reason to offer Miranda rights is so you can use the words of the suspect against him. There is plenty of evidence of this guy who had strapped chemical explosives to his legs, set them off, and burned himself in front of 200 witnesses. It doesn't matter what he says, you can convict him. Why weren't our intelligence agencies consulted on the important decision of whether to Mirandize him? At least the FBI agents questioning him should have had the benefit of the intelligence that other agencies knew. Who is running the war on terrorism? I am afraid it is the Justice Department or the White House. Why did the White House announce what the few of us who were notified of his cooperation warned not to disclose? Not only did they disclose that information the day after we were advised, they disclosed the fact that Abdulmutallab's family came here to pressure him. Why on Earth would you do that? What message does that send? Unfortunately, to the family, they now have targets on their backs, because the terrorists know that they have convinced a member of their family to talk. What does it say to future sources? We are going to be concerned if they provide information that our intelligence agencies asked for that they will be identified by the White House and put at great risk.

The handling of the Christmas Day bomber also showed something else. When the President took away the powers of the CIA to question terror suspects, he said: We will handle it in the White House. We found out on December 25, 11 months after he announced it, that there was no high value detainee interrogation operation set up. They had no plans on how to do it. These people are supposed to be interrogating high value detainees and for a year they didn't set it up until after the attack.

Our intelligence chiefs testified early this month in an open hearing that there will be attempts by terrorists to attack again. Yet the administration waited until after the attack to begin the process of setting it up. These are all important policy questions to raise. If the White House had its way, I wouldn't be asking them, but I am asking them because I am very fearful that our security has been lessened, and that this is a subject this body must address.

Article I of the Constitution created a legislative branch to help ensure that nobody in government is above oversight and being held accountable. I as a Senator have a right and responsibility as a Member of this body and as a representative of the people of my State to shine a light on policies that I think need to be changed, and I will continue to do so regardless of what is said about me. I am concerned that these policies of the administration have moved us back to a pre-9/11 mentality. That failed in the past and it will again.

In terms of the debate, my colleagues from California and Vermont have raised questions in a letter. They said we ought to try these terrorists in an article III court because the rule of law must prevail. Well, I agree, but we have a law. It is called the military commissions law that was passed and signed into law last year by the President that carries out the laws of war. Those are places which are much safer in terms of handling the terrorists, in terms of handling classified information.

Finally, they say that we should not—they strongly believe we ought to bring all of these people to article III courts and the prosecutors and everybody can handle those. It is not the prosecutors or the intelligence community we are worried about, No. 1. It is the cost, because the terrorist trial is going to bring undesirables here, and the city of New York figures it is going to have to spend over $2 million a year. They do not want it. Nobody else wants it.

I tell you, even more important, when Khalid Shaikh Mohammed was apprehended, he said: My lawyer and I will see you in New York. He wants to come to New York or Washington or someplace where he can get a lot of media attention—and believe me, were he to be tried here, he would get a lot of media attention—because he wants to be able to spread his message to others who might be vulnerable that they need to join him in the jihad.

I also pointed out that disclosure of sensitive information has and will be released if you try him in an article III court because any defense attorney bound to provide the best defense for their clients will have to get into what the intelligence community knew, how they knew it about him, and that is a disaster. That is why I welcome the discussion and I urge a change in policy.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

TRIALS OF DETAINEES

Mr. DURBIN. Madam President, it is so interesting to notice the change of approach. When President Bush was in office and we were fighting terrorism, Democrats would come to the floor and question interrogation and prosecution and be reminded over and over again by the Republican side of the aisle that we were literally interfering with national security and the authority of the Commander in Chief. I took those criticisms lightly because we do have a responsibility in Congress to speak out as a separate branch of government if we disagree with the Executive. Now to hear the other side, they have completely switched their position. Now they believe it is fair game to question the decisions that are being made on a daily basis by this President of the United States relative to our national security.

What my friend from Missouri, who has every right to come to the floor and speak his mind representing his State, has failed to mention is one basic fact: Since 9/11, 195 terrorists have been convicted in article III courts in the United States of America. Decisions were made by Republican President George W. Bush to prosecute suspected terrorists in article III courts, and, yes, that would involve Miranda warnings because they believed that was the most effective place to try them.

There was an alternative, so-called law-of-war approach, to use military commissions. How many of these suspected terrorists were actually tried before military commissions since 9/11? Three. Madam President, 3 have been convicted before military commissions, 195 in the courts of our land.

Now come the Republicans to say: We want to stop any conviction in any criminal court in America. We believe the people should only be convicted by military commission.

I take a different view. I believe this President, this Attorney General, and all of the people involved in national security should have the options before them: Use the best forum available to bring out the facts and to result in a conviction.

Do I fear our court system will be used by these alleged terrorists? They may try. They have not had much luck. When Zacarias Moussaoui, the so-called 19th 9/11 terrorist, was tried in Virginia, I don't think it changed America one bit. I don't think it changed the way we live and the security we have. Incidentally, he was convicted and is serving a life sentence in a supermax prison, one of our Federal penitentiaries.

Those who argue that we should never consider it ignore the obvious. Look at the list of terrorists convicted in Federal courts aside from Zacarias Moussaoui: Ramzi Yousef, the mastermind of the 1993 World Trade Center bombing; Omar Abdel Rahman, the so-called Blind Sheik; the al-Qaida sleeper agent Ali Al-Marri from my State of Illinois, where he was arrested; Ted