

Kaczynski, the Unabomber; and Terry Nichols, the Oklahoma City coconspirator. Our courts work. Why would we choose to tie the hands of this administration to choose the most effective place to try a terrorist?

This notion, too, about keeping Guantanamo open, that it was just President Obama's idea, no, it happened to be Senator McCain's idea as well, his opponent in the Presidential election. He called for the closing of Guantanamo, as well as GEN Colin Powell, who was head of not only our State Department but head of national security under former Presidents. It is an indication to me that this, on a bipartisan basis, is something that should be done and done in a careful way. I would agree with that. But let's be honest. There has been a bipartisan consensus that this is a good thing to do to make America safe.

The last point I would like to make on this issue is that we have a responsibility to tell the world that those who are accused of terrorism will be tried in our courts or before our military commissions in a way that respects due process so that at the end of the day, we do not have an outcome where people question whether we applied the principles and values to these trials as we apply them to other trials involving Americans.

For those who argue they should be given the back of the hand, ignored, no warnings, no due process, at the end of the day we will not be stronger if we follow that counsel and that advice regardless of the outcome and afraid America's intentions will be questioned. I want us to be strong in this world, not fearful and shuddering and quivering before these alleged terrorists. We need to stand up strong, be safe as a nation, gather the information.

This so-called Christmas Day bomber who was found on this plane, whether he should have been Mirandized or not, the fact is, after a short period of time his family was brought to where he is being held in a Federal penitentiary—I might add, in Michigan—and after meeting with them, he gave even more information. To argue that he has not been helpful and not forthcoming I think states something the record does not reflect.

SNOWFALL IN WASHINGTON

Mr. DURBIN. Madam President, I first came here as a student in 1963. It is a great city. I went to college here, law school here. I lived a big part of my life, at least part time, in Washington, DC. I never could get over how people in this town reacted to snow. I am convinced that infants born in Washington, DC, are taken from the arms of their loving mothers right when they are born into a room where someone shows a film of a snowstorm with shrieking and screaming so that those children come to believe snow is a mortal enemy, like a nuclear attack, be-

cause I have seen, for over 40 years here, people in this town go into a full-scale panic at the thought of a snowfall. We joke about it. Those of us from parts of the country that get snow and know how to live with it cannot get over how crazy the reaction is many times. But in fairness, this has been a heck of a snowstorm. It is the largest on record in Washington, DC.

I wish to say a word on behalf of the people of the District of Columbia and all of the surrounding suburbs but especially for those who work on Capitol Hill, the Capitol Police as well as those in the Architect's office, who have literally been working night and day to make sure visitors who still come to this Capitol in the middle of a blizzard—I saw them yesterday coming up to take pictures of our Capitol dome—can come here safely. They have done an exceptional job. Today is no exception. Many of the members of our staff in the Senate and the folks who work here came trudging through the snow, and it was not easy to get here. I wish to say a word of thanks to all of them for the special sacrifice they have made and to say to the folks in Washington, DC: This was a heck of a snowstorm. You had every right to be concerned. Some of the other ones, maybe not, but this one was the real deal.

Madam President, how much time do I have remaining?

The PRESIDING OFFICER. Three minutes.

HOME FORECLOSURES

Mr. DURBIN. Madam President, I wish to say one last word about an issue that affects my State and many others too. We received news today that the foreclosures of houses in Illinois have increased dramatically over last year—a 25-percent increase in foreclosures in Illinois over the last year. The same thing is true of many other States. The States hit the hardest are Nevada, Arizona, California, Florida, Utah, Idaho, Michigan, Illinois, Oregon, and Georgia.

We have to do more. The current system we have to deal with foreclosures is not working well. I met this morning with Treasury Secretary Geithner and gave him some ideas. I hope my colleagues will join me in coming up with approaches that will try to save people from this terrible outcome of foreclosure. Many people have lost their jobs and cannot pay their mortgages. Understandable. Maybe we can help them stay in their houses as renters or some other circumstance. Some have seen the value of their home start to decline to the point where the value of the home is less than the outstanding mortgage and there is no incentive to continue to sacrifice and make a mortgage payment for a home that is worth a fraction of its original value.

Those are realities. But the reality of foreclosure is obvious. I was with Congresswoman JAN SCHAKOWSKY in Evanston, IL, a few days ago. We went

down Gray Street and saw homes that had been good, solid, middle-class homes now boarded up literally for years that have become a blight on that neighborhood, dragging down the value of every other home and threatening the safety of the neighborhood as they become drug and crime havens. We are also seeing a phenomena like that in places such as Marquette Park in Chicago where the depopulation of neighborhoods is leading to commercial flight—food deserts in the city of Chicago brought about by foreclosures.

These banks have not done enough, period. They have not stepped up to their responsibility. I tried to change the Bankruptcy Code to give us a fighting chance for a bankruptcy judge to rewrite a mortgage to avoid foreclosure, and I was defeated by the banks. They have a powerful lobby on Capitol Hill even to this day despite what we have gone through.

This foreclosure situation has gone from bad to worse. I don't believe America can truly recover economically until we address this issue in a forthright manner. I look forward to working with the Treasury Secretary and the administration to do that when we return from the Presidents Day recess.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

TERRORIST TRIALS

Mr. SESSIONS. Madam President, I wish to share a few thoughts on a matter of concern; that is, our national security and the procedure by which we are handling people we arrest who are attacking this country. It will be a bit of a follow-on to what Senator BOND of Missouri had to say. I disagree with my distinguished colleague, Senator DURBIN, the assistant Democratic leader in the Senate. He is a member of the Judiciary Committee. I think he is wrong about that. I serve on the Judiciary Committee, too, and I would like to share a few thoughts.

First, there has been a full-scale attempt to assert that President Bush tried most of the terrorists or terrorism-related cases that developed over the years in the normal civilian courts. That is true to some degree. I notice that in the 195 cases Senator DURBIN said were tried in the Federal courts, he counted the Unabomber and Terry Nichols, one of the ones who blew up the Oklahoma City Federal Building. There is a big distinction: The Unabomber was not officially at war with the United States, had not declared war on the United States as al-Qaida has, and the United States had not declared war on him or on Terry Nichols, who was unknown, I suppose, to anybody at the time he committed that crime and was tried. A lot of the other cases deal with such things as aiding a terrorist by providing money to some terrorist organization that supports terrorism, violating various

complex Federal laws, and they are tried in Federal courts. They are American citizens, and they are tried here. That is the reason some of the cases that have been cited were tried in Federal court.

Another reason of significant import that cases were tried in Federal court rather than in military commissions was not because President Bush and his staff desired it but because we ended up with full-scale challenges of the military commissions as they were set up originally after 9/11. It took some time to get them set up. They were challenged. The U.S. Supreme Court concluded that a number of procedures conducted in the military commissions did not meet constitutional muster, did not comply with international agreements that the United States was a party to, and they said: You have to stop. So the military revamped what it was doing. The Congress passed the Detainee Act to legitimize the military commission trials and make sure it complied with the Supreme Court so we could get on with it.

We had some 5,700 people in Guantanamo. It was never the plan of the Bush administration, ever, to try those people in civilian courts. In fact, Congress appropriated the money. We built courtrooms with video cameras and security at the Guantanamo base and prison. We had them set up so trials could be conducted, press people could come and see the trials, subject to national security questions that may arise, and do those trials in that fashion.

But after President Obama got elected, he directed that Attorney General Holder evaluate whether we should do that anymore or not. First, he stopped them—he issued an order to stop it—and then he asked that a review be conducted. Mr. Holder conducted a review and he decided, and that report was, it would be presumed the people being held in Guantanamo—many of whom, most of whom were captured on the battlefield in Iraq and Afghanistan and other places in that area of the world—would be tried in civilian courts. This was an absolute reversal of that.

Last year, I offered legislation that was passed by both Houses of Congress and signed by the President that said, if you are part of al-Qaida, you are presumed to be at war with the United States, and it is not necessary, in a military commission trial, to put on all kinds of testimony, take weeks to prove we are at war with al-Qaida. That is simply already a fact; we have declared war. Congress has authorized the use of military force against al-Qaida, and they are attacking us. That is what war is.

So John Brennan, the President's Deputy National Security Adviser, which apparently in this administration is a pretty big position—I guess these kind of personal Presidential staff people are what you make of them—has been very public. He has made a series of statements which

demonstrate this administration has learned no lessons from their mishandling of the Christmas Day bomber—Umar Farouk Abdulmutallab—who was captured on Christmas Day, attempting to blow up a plane. Not only did Mr. Abdulmutallab have recent intimate knowledge of terrorist operations in Yemen, but, in fact, he came directly from Yemen, having been provided a bomb by al-Qaida, as they claimed credit for and apparently he has acknowledged.

He was an operative of al-Qaida. He had no legal claim to protections of the American criminal justice system, in any case. Even if he had been a citizen of the United States, which he was not a citizen, he had no right to be tried in civilian court in the United States because he was an agent and an operative and an unlawful combatant directly connected with al-Qaida. So this is a big deal. This is a matter that has to be analyzed and thought through, and I am concerned the administration is not listening.

The combination of these factors about his background made his capture a unique intelligence opportunity—one of the most important opportunities since 9/11 because al-Qaida had moved a large part of its operation to Yemen, using it as a training base. We did not know enough about it. It is very important we learn everything we can about how they are operating in Yemen, who the leaders are, and how they could be attacked and neutralized. So the decision to treat him as a civilian was very wrong.

The Department of Justice immediately began to treat him as a common criminal being investigated by the FBI. They gave him his rights after 50 minutes. In truth, colleagues, as a prosecutor myself, he should have been given his rights, probably—normally, you would expect them immediately. There may be some exceptions that could have allowed this not to occur immediately, but, normally, when a civilian is arrested and you ask him a single question, that individual who is in custody is entitled to Miranda rights then. Miranda rights are not just that you have a right to remain silent. Miranda rights say you have a right to remain silent, and we will appoint you a lawyer. You have a right to have one, and we will appoint you one if you don't have the money. People tend to clam up when they are told that.

So they offered him an attorney and did not treat him as the rare intelligence asset he was. That decision, it is indisputable, I truly believe—and this is not politics we are talking about—jeopardized the kind of fresh, timely intelligence that saves lives and prevents further attacks on the homeland of our country.

Mr. Brennan says one of the reasons the administration classified Abdulmutallab as a civilian was because he was captured on U.S. soil. This comment is truly startling and makes no sense. As Deputy National Security

Adviser to the President, Mr. Brennan ought to be aware that because Abdulmutallab is an al-Qaida operative, he is an unprivileged enemy belligerent—in our common, more current definition of the term—and, thus, he is automatically eligible for a military trial.

Indeed, the amendment I offered last year to the Military Commissions Act would permit this administration to do this without even having to reestablish the obvious: that al-Qaida is at war with the United States. So for the President, Mr. Holder or Mr. Brennan to persist in arguing that the law or past precedent somehow justified their treatment of Abdulmutallab as an ordinary criminal is wrong.

But Mr. Brennan has gone further than simply confusing the law. He has confused reality. In his recent op-ed in USA Today, he defiantly declares the administration made the right call on Abdulmutallab and that providing captured terrorists with civilian due process, civilian lawyers, and the right to remain silent has no negative impact on our ability to gather intelligence.

I dispute that. That is totally illogical. I don't know how many cases Mr. Brennan has prosecuted—not many. I prosecuted thousands; supervised them and tried them myself—but there is no doubt that you lose intelligence when you appoint a person a lawyer and tell them they have a right to remain silent. We are virtually the only country in the world that does this. It is not considered a constitutional right. It is something the court thought would be a good idea, to keep people from being abused by police, and so they set up this rule. It is not part of fundamental due process. It wasn't even a rule until 50 years ago. We never did that. Canada doesn't do it, France doesn't, Germany or Italy. We don't have to give them.

Mr. Brennan says: "There is little difference between military and civilian custody other than an interrogator with a uniform." Not so. He argues: "The suspect gets access to a lawyer and the interrogation rules are nearly identical." That is absolutely false.

I have been disappointed at the response the Attorney General has given to members of our committee, but when the National Security Adviser says something such as that—and I confronted him with it in a hearing earlier and he persists in making that kind of statement.

Mr. Brennan has also said previously that "there are no downsides or upsides in particular cases" and that because we are a nation of laws, criminal courts are the preferred venue. Not so—at least that this is a preferred venue. We are a nation of laws, and our laws and international law allow for the trial of unlawful combatants in military commissions. Attorney General Holder admitted that himself in a hearing when answering questions asked of him. I said: Mr. Holder, the decision to try these people in civilian court rather than military commissions is a policy decision, and basically

he said yes to that. It is not required under our law.

I can tell you—and not with speculation and it is not a theory but a fact—that criminal defendants will routinely stop talking and providing information when you give them Miranda and appoint them a lawyer. The first thing a lawyer is going to do, even in a case such as this, is to advise his client not to make any more statements, if he has made any. If he says he wants a lawyer, the questioning must stop until one is produced. That is what it means to try a person in civilian court. It is different.

You better believe terrorists who are trained to exploit our system will do everything in their power to use that system against us, if we let them. When Khalid Shaikh Mohammed—mastermind of the 9/11 attack, that so horrible day—was captured, he immediately asked for a lawyer. He already knew. But he wasn't given one. Instead, he was interrogated at length over a period of time as a military combatant. These interrogations revealed critically important information that helped foil other attacks that could have been levied against the United States.

When Abdulmutallab was questioned, he was questioned for only 50 minutes before being given a lawyer, and then he stopped talking. So we are told: Weeks later, he started talking again. Don't worry, Jeff. Quit complaining. Five weeks later, now he has started talking. We got his daddy to come in, and maybe we can do a plea bargain with him or something and he will talk.

Well, you can do that if they are in military custody. That is not only done in civilian custody, No. 1. No. 2, what did they have to promise him to get him to provide information? Did they promise him leniency? Did his lawyer demand it? Did his lawyer demand a written plea agreement before he allowed him to speak?

That is what will happen in most cases. I don't know what happened in this one. But we are not talking about just this case. We are talking about the policy of whether it is better to treat somebody as an unlawful combatant if they come from al-Qaida or in a civilian trial in America. Fresh, immediate intelligence is awfully valuable many times, and it can grow stale very quickly, although other intelligence can be extremely important, even if the person you have captured waits 6 months to give it to you. You just never know. But the truth is, the more intelligence, the sooner obtained, enhances our national security. Things that are unnecessary, that are not required by law, that delay the obtaining of intelligence and delay the amount you get is damaging to our national security.

So that is the policy question we are dealing with—this decision to put vitally important intelligence at great jeopardy. Nevertheless, Mr. Brennan

insists that military interrogations are the same as those provided to civilians. But when a civilian asks that the interrogation stop, it must stop at that moment. This is not true in the military situation.

Well, let me back up a little bit. A person apprehended on the battlefield, a prisoner of war, who is a lawful combatant, wearing a uniform, fighting the United States in a lawful manner, according to the laws of war, cannot be excessively interrogated, cannot be tried for any crime but can be held until the war is over, whether it is 1 year or 10 years. That is the law of the world and the law of the United States. But if they are unlawful combatants, as these malicious, devious, murdering al-Qaida thugs are—they do not wear a uniform, they do not comply with the laws of war, they attack innocent civilians deliberately to spread terror—they are in violation of the rules of war.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. SESSIONS. I thank the Chair, and I ask unanimous consent for 3 additional minutes.

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

What would have happened to Abdulmutallab if he were handled by the military? He would have been interrogated by people in short order who were intimately familiar with the situation that was developing in Yemen. They would have been able to ask him questions without a lawyer being present. He did not have to have a lawyer. They could use the legal interrogation techniques that Congress has passed into law and directed the military to use in these kinds of interrogations—and no more—or they would be in violation of the law. He would not be abused. Then eventually he would be tried, or not tried, as the military and the national security would dictate.

But if you arrest him and put him in a civil situation, he immediately has to be advised of his rights, immediately given a lawyer. He is then entitled to a speedy trial. He is entitled to demand discovery and information from the government about how they caught him and who provided the information. He could demand to go to trial and be able to speak out and use it as a forum to promote their agenda. There is a huge difference between the two.

For Mr. Brennan to act as if there is no difference, and for my colleagues to say President Bush tried these people, before we ever got the system up and running in a healthy way, is disingenuous. It is not accurate. It is not correct in a rational discussion of how this would be.

This is what President Obama said in an important "60 Minutes" interview about these terrorists:

Now, do these folks deserve Miranda rights? Do they deserve to be treated like a shoplifter down the block? Of course not.

Amen, Mr. President. Of course they are not entitled to Miranda rights. Of

course they are not entitled to be treated like a shoplifter down the block. But when they decided to try Abdulmutallab in a civilian court, that is exactly what they decided to do—to treat him with all the rights and rules an American citizen would have who is charged with a shoplifting offense.

We raised this issue last fall, back in September, with the Director of the FBI, about Miranda. I asked him:

So, if you're going to try terrorists in Federal court, they should be Mirandized, right?

If you want the statement, a particular statement at a particular time admissible in the Federal court, generally that—that has to be Mirandized.

In fact, you can't even ask him questions lawfully until you provide him the Miranda rights. If he says anything that is of value to the prosecution, it is dismissible.

Then what about this dramatic event in the Judiciary Committee? Senator LINDSAY GRAHAM, a very experienced Senator who still remains a JAG officer in the Air Force—after many years he still goes off to do his duty 2 weeks a year—he asked this dramatic question to the Attorney General.

If we captured bin Laden tomorrow, would he be entitled to Miranda warnings at the moment of capture?

Attorney General Holder:

Again, I'm not—that depends.

He never gave a full answer.

I thank the Chair and believe we have to get our heads straight on this matter and cease to provide the kind of due process rights that American citizens get and provide the kind of legitimate due process rights that a military commission provides—and they are great. But they are not the same. Understand, we are at war, and it creates a different dynamic in how the cases are processed.

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

The PRESIDING OFFICER. Will the Senator withhold?

Mr. SESSIONS. Madam President, I withhold—noting the absence of a quorum request.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

BUDGET DISPARITIES

Ms. MURKOWSKI. Madam President, when President Obama delivered his first State of the Union Address several weeks ago, I tell you I was pleasantly surprised by his remarks on energy policy. In addition to calling for bipartisan legislation, the President indicated his support for more nuclear energy and new oil and gas development. I think those are all positive steps. They are taking us in the right direction, not least because they would draw strong support in Congress, and I think they would help create jobs all across the country at a time when we are looking at how we can boost the economy and create jobs. This is critically important.

Having listened to the President's ideas, I looked forward to seeing how