

anything wrong. Some of them are trying to rebuild their lives and stay safe in a very difficult situation.

Finally, we had a chance to visit Sudan. I wished to go there because I have stood on the floor so many times and given speeches about Darfur and the genocide that occurred there. In addition to that troubled part of Sudan, there has been an ongoing battle between north and south Sudan which appears to have resolved itself peacefully with an election that will be held in the near future for the national legislature and then early next year to decide if south Sudan will be a separate country. There are about 8 million people living in south Sudan. We traveled on the only road in south Sudan. We met with the man who is Vice President of Sudan now and would be President, I believe, of the new south Sudan, Mr. Salva Kiir. He is a former rebel who fought in the bush for years, surrounded by Governors in south Sudan who went through the same experience. In just a few months, they may need to build a nation. It is a daunting task.

I worry about it because when there is a power vacuum and a failed state in Africa, people move in on it and use it for exploitive and terrorist purposes.

We then went to Khartoum, which is a legendary city in Africa, and met with representatives of the government there, talking about many of the issues they face and the status of Darfur today which, thank God, is more peaceful than in years gone by. One of the more interesting conversations we had in Khartoum was with one of the Ministers. I brought up the issue of global warming, wondering if this man in the middle of Africa, near the Equator, felt there was a need for us to be concerned about global warming.

He said: I can take you 300 meters from where we are meeting now. I will show you the Nile River, and I will show you the impact of global warming. We could walk out into stretches of land that used to be islands in the middle of the river. You can walk there now because the river is so low. Many people in that part of Africa depend on the Nile for irrigation. We believe in global warming.

If you want to know one of the causes of the genocide in Darfur, it was because that area is becoming a desert, and people are fighting over what is left of land that can be cultivated. I think about debates we have had on the floor of the Senate. In fact, there are Senators who proudly say there is no such thing as global warming. I wish they could have been with me in Khartoum and spoken to this man about evidence he is seeing in that far-away place about changing climate and changes in lifestyle, genocide, and war that have followed global warming. It is not just an environmental issue. It is a security issue.

There are frequent debates about the value of U.S. foreign assistance. When Americans are asked, how much do we spend in foreign aid, the most common

response is, about 25 percent of the Federal budget. The fact is, it is just over 1 percent in foreign aid around the world. We spend far less as a percentage of our gross domestic product than many nations. But the work we do is so absolutely essential for maintaining life, fighting disease, for making certain that young people have a fighting chance.

President Obama recognizes that. I hope we can have bipartisan support to continue our help with foreign aid, even in this difficult time.

The last issue I will discuss on this trip Senator BROWN and I took is one I will save for a separate presentation. But without fail, in every African nation, I would ask them the same question: What is the presence of China in your nation? Without fail, they would say: It is interesting you would ask.

The Chinese are moving into Africa in a way we should not ignore. They are providing capital assistance and loans to countries all over Africa, which can provide them with minerals and resources for their economy and, ultimately, with markets for their products. Leaders in Africa, such as the President of Ethiopia, say to me: When the West walked away from Africa, China stepped in.

The Chinese have a strategy and a goal. If we don't become sensitive to it and what it will mean to the next generation of people living in each of those countries, we will pay a heavy price. We have to understand that these people now may be in underdeveloped countries and struggling, but tomorrow they will have a middle class, and they will be purchasing goods and services. They will remember that their highways and stadiums and schools were built with loans from the Chinese. Incidentally, those loans come with strings attached. When the Chinese loan money to a country such as Ethiopia, it is so a Chinese construction company can build the project using Chinese engineers, technicians, and workers. So they are providing work projects with the money they are loaning to each country and being repaid in local resources such as oil and minerals.

We can't ignore this reality. It is happening all over the world. The Chinese have a plan. I am not sure America has a plan. We should.

#### HANDLING OF TERRORIST SUSPECTS

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

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

The Republican minority leader recently said, referring to Abdulmutallab:

He was given a 50 minute interrogation, probably Larry King has interrogated people longer and better than that. After which he was assigned a lawyer who told him to shut up.

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

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

Attorney General Eric Holder recently sent a detailed, 5-page letter to Senator MCCONNELL explaining what actually happened in this case.

I ask unanimous consent that it be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

OFFICE OF THE ATTORNEY GENERAL,  
Washington, DC, February 3, 2010.

Hon. MITCH MCCONNELL,  
U.S. Senate,  
Washington, DC.

DEAR SENATOR MCCONNELL: I am writing in reply to your letter of January 26, 2010, inquiring about the decision to charge Umar Faruk 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 of the 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 or 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 “[f]ollowing 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 pro-

viding 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 Ressay (convicted in 2001 for the Millennium 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 Kahliah Al-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. Al-Marri’s case, the United States Court of Appeals for the Fourth Circuit reversed a prior panel decision and found in a fractured en banc 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 Al-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, provides explicitly that “[w]ithin the United States, Miranda warnings are required to be given prior to custodial interviews. . . .” 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.

Sincerely,

ERIC H. HOLDER, Jr.

Mr. DURBIN. Here is what General Holder said:

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

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

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

This was very similar to the attempted attack by Abdulmutallab, another foreign terrorist who also tried

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

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

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

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

In mid-January, Abdulmutallab began talking again to FBI interrogators and providing valuable intelligence—after the Miranda warnings. FBI Director Robert Mueller described it this way:

... over a period of time, we have been successful in obtaining intelligence, not just on day one, but on day two, day three, day four, and day five, down the road.

According to another law enforcement official:

The information has been active, useful, and we have been following up. The intelligence is not stale.

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

This is a very different approach than we saw in the previous administration, when detainees who refused to talk were subjected to torture techniques such as waterboarding.

Real life is not like the TV show "24." On TV, when Jack Bauer tortures someone, the suspect immediately admits everything he knows. Here is what we learned during the Bush administration. In real life, when people are tortured, they will say anything to make the pain stop. So they often provide false information, not valuable intelligence.

Richard Clarke was the senior counterterrorism adviser to President Clinton and President George W. Bush. Here is what he said recently about the Obama administration's approach:

The FBI is good at getting people to talk ... they have been much more successful than the previous attempts of torturing people and trying to convince them to give information that way.

Would Abdulmutallab's family have traveled to the United States and persuaded him to cooperate if they thought he was being tortured here? I do not think so. A senior Obama administration official said:

One of the principal reasons why his family came back is that they had complete trust in the U.S. system of justice and believed that [their son] would be treated fairly and appropriately.

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

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

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

My colleagues on the other side of the aisle argue that Abdulmutallab should be held in military detention as an enemy combatant. But terrorists arrested in the United States have always been held under our criminal laws. Here is what Attorney General Eric Holder said in his letter to Senator MCCONNELL:

Since the September 11, 2001 attacks, the practice of the U.S. government, followed by prior and current administrations without a single exception, has been to arrest and detain under federal criminal law all terrorist suspects who are apprehended inside the United States.

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

The Bush administration did move two terror suspects out of the criminal justice system after they were arrested. One of them was Jose Padilla. He was designated as an enemy combatant and transferred to military detention. But then what happened? In a court filing, the Bush administration admitted that Padilla had not talked to his interrogators for 7 months. They said:

There are numerous examples of situations where interrogators have been unable to obtain valuable intelligence from a subject until months—or even years, after the interrogation process began.

Two important points about the Padilla case: My Republican colleagues

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

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

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

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

My Republican colleagues did not complain when the Bush administration prosecuted Reid and Padilla in criminal courts. But now they argue terrorists such as Abdulmutallab and Khalid Shaikh Mohammed should be tried in military commissions only because Federal courts are not well suited to prosecute terrorists.

Well, let's look at the numbers. Since 9/11, 195 terrorists have successfully been prosecuted and convicted in our Federal court system. Besides Reid and Padilla, here are just a few of the terrorists who have been convicted in our Federal court system and are now serving long prison sentences: Ramzi Yousef, the mastermind of the 1993 World Trade Center bombing; Omar Abdel Rahman, the so-called Blind Sheikh; and the 20th 9/11 hijacker, Zacarias Moussaoui, who was tried across the river in Virginia and now sits in a prison cell in Florence, CO.

Compare this with the track record of military commissions. Some would have us believe that military commissions have been so much more effective in going after terrorists. So let's look at the record. Mr. President, 195 terrorists have been successfully prosecuted and convicted in our criminal courts. How about military commissions? Since 9/11, only three individuals have been convicted by military commissions—that is 195 to 3—and two of those individuals spent less than a year in prison and are now living freely in their home countries of Australia and Yemen.

GEN Colin Powell, the former head of the Joint Chiefs of Staff and Secretary of State under President Bush, supports prosecuting terrorists in Federal courts. Here is what he said about military commissions last week:

The suggestion that somehow a military commission is the way to go isn't borne out by the history of the military commissions.

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

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

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

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

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

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

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

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

have an obligation to get the facts right when we either defend or criticize the President.

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

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

GEN Colin Powell has a different opinion, different than Senator MCCONNELL. Here is what he said last weekend:

To suggest that somehow we have become much less safe because of the actions of the administration, I don't think that's borne out by the facts.

What is the motivation for this criticism of the President? Well, as Senator MCCONNELL said to the Heritage Foundation:

You can campaign on these issues anywhere in America.

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

Richard Clarke, the senior counterterrorism adviser to Presidents Clinton and Bush, said:

Recent months have seen the party out of power picking fights over the conduct of our efforts against Al Qaeda, often with total disregard to the facts and frequently blowing issues totally out of proportion, while ignoring the more important challenges we face in defeating terrorists.

Mr. President, 9 years after 9/11, al-Qaida still is a serious threat to America. We know that terrorists are plotting to attack us even as we speak. President Obama knows it as well. He understands as Commander in Chief that he has a special commitment to the American people to keep us safe. Congress is a political body and this is an election year, but this issue is too important to become a political football. Democrats and Republicans should be united in supporting all of the efforts of all of the good men and women, including the President, in trying to fight terrorism and keep America safe.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

MR. REID. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

UNANIMOUS CONSENT REQUEST—  
H.R. 1586

Mr. REID. Mr. President, I ask unanimous consent that the Senate now proceed to Calendar No. 36, H.R. 1586, and that the Reid substitute amendment, which is at the desk, be considered read; that the Republican leader, or his designee, be recognized to offer a substitute amendment, and that there be 60 minutes for debate with respect to that amendment, with the time equally divided and controlled between the leaders or their designees; that upon the use or yielding back of time, and if a budget point of order is made against the amendment, a motion to waive the relevant point of order be considered made, and the Senate then vote on a motion to waive the point of order; that if the waiver is successful, the amendment be agreed to and the Reid substitute, as amended, be agreed to; that if the waiver fails, the amendment be withdrawn; further, that there be 30 minutes for debate with respect to the Reid substitute amendment, with the time equally divided and controlled between the leaders or their designees; that upon the use or yielding back of time, and if a budget point of order is made against the amendment, a motion to waive the relevant point of order be considered made, and the Senate then vote on the motion to waive the point of order; that if the waiver is successful, the Senate proceed to vote on adoption of the Reid substitute amendment; further, that no further amendments or debate be in order; that upon disposition of the Reid substitute amendment, the bill, as amended, be read the third time; and following the reading by the clerk of the budgetary effects of pay-go legislation with respect to H.R. 1586, the Senate proceed to vote on passage of the bill, as amended; that upon passage the title amendment, which is at the desk, be considered and agreed to.

The PRESIDING OFFICER. Is there objection?

Mr. BUNNING. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. REID. Mr. President, as usual, prior to coming to call off the quorum, I had a visit with my friend from Kentucky, who is someone for whom I have the greatest respect. I am going to miss him so much, as I have said publicly and privately. In the days of my youth, I, of course, wanted to be the baseball player that he turned out to be. But that is another story. I didn't want to pitch. I wanted to be something else—a catcher or a shortstop.

Mr. President, I regret that my friend has objected to this modest request. Earlier today, I was advised by the Republican leadership that they needed to have an amendment to be offered on this bill. As noted above, we

agreed to that request. The items that we are proposing to extend in my substitute amendment include unemployment insurance, COBRA, flood insurance, highway funding, small business loans, and small business provisions of the American Recovery Act, the Satellite Home View Act, SGR—the so-called doctor fix—and poverty guidelines. All of these provisions will expire on Sunday, February 28. That is this coming Sunday.

Agencies have been already sending out notices to unemployed workers—agencies such as a number of transportation departments around the country have sent out notices that their work had come to a stop, so they would not be getting benefits.

It is critical that these programs continue so that Americans who are already struggling can continue to get this modest relief. Therefore, I regret the objection of my friend from Kentucky. I hope we can work through this objection and continue these important programs.

Mr. President, we have been told by the Congressional Budget Office that the No. 1 stimulative to our struggling economy is to give people who are out of work, and have been out of work for a long time, unemployment benefits. That money goes right into the economy—whether it is in Anchorage, Las Vegas, or Louisville.

COBRA—there are people who are losing their jobs and they need the ability to buy insurance. Statutorily now they can do that, but this is going to expire. Highway funding—I have already talked about that. It is just a real shame, and I am sorry that we can't get this done by February 28. But we can't. This month would give us the time we need to complete our work.

As far as unemployment benefits, notices have already gone out to thousands of Americans that their benefits are going to be terminated—these unemployed workers. They are already crushed with all the problems they have, and now they are not going to have unemployment benefits. That is simply not right.

I say to my friend again, I regret that we weren't able to work this out today. I hope there is something we can do to work through this objection. We need to continue these important programs.

The PRESIDING OFFICER. The Senator from Kentucky is recognized.

Mr. BUNNING. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 36, H.R. 1586; that the amendment at the desk, which is the text of the Reid substitute, with an offset, be agreed to; the bill, as amended, be read the third time and passed; and the motion to reconsider be laid on the table.

Mr. REID. Mr. President, reserving the right to object, with the provisions that we are seeking to be extended, there are some of them that cost money.

They all cost a little bit, but there are three items here that cost more

than any of the others; that is, unemployment compensation, COBRA, and the SGR. If there were ever an emergency—ever—in this body, certainly it would be unemployment compensation and COBRA moneys.

I came to the floor earlier this year—it could have been late last year; time flies—to try to get a permanent fix, as we call it, for the SGR for 10 years. That did not get enough votes. That is unfortunate. And this is really unfortunate. This SGR, the Medicare payments that will be allowed to doctors, is for more than doctors; it is for doctors who will take Medicare patients. Many doctors in America today will not take Medicare patients. If we do not get this extended, a lot more will not take Medicare patients.

Our Medicaid programs throughout America are in deep trouble. I met Monday with 12 Governors. Everyone said they were in desperate shape for a lot of reasons, but one of the reasons is what has happened to Medicaid. Not only is it important to the doctors—and that is important—it is more important to the patients, and many programs to reimburse medical professionals—doctors—are based on what we have for Medicare reimbursement. If we do not get Medicare reimbursement, it is a cyclical thing that winds up tearing down the whole system.

I say to my friend that I hope someone can come up with an idea during the night that would allow us to get this done. We are going to take up this bill, all these items permanently next week or at least most of it is for a year or so. That will give us time to complete all this business. Even though we passed the so-called jobs bill which extended the highway bill for a year, the House cannot get it done that quickly. They can move more quickly than we can, but they cannot move that quickly.

Again, I hope we can work something out in the next 12 hours or so. Therefore, I object.

The PRESIDING OFFICER. Objection is heard.

The Senator from Kentucky.

Mr. REID. Mr. President, I was going to propound a unanimous consent request.

Mr. BUNNING. Go ahead.

MEDICARE PHYSICIAN PAYMENT  
REFORM ACT OF 2009

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to Calendar No. 252, H.R. 3961.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 3961) to amend title XVIII of the Social Security Act to reform the Medicare SGR payment system for physicians and to reinstitute and update the Pay-As-You-Go requirement of budget neutrality on new tax and mandatory spending legislation, enforced by the threat of annual, automatic sequestration.

There being no objection, the Senate proceeded to consider the bill.