

RESOLVED: THAT *MIRANDA*  
PROTECTIONS SHOULD NOT  
BE EXTENDED TO  
TERRORISTS

# The terrorist plan



# Umar Farouk Abdulmutallab and his target



# Abdulmutallab's Questioning

- ▣ Abdulmutallab spoke openly to FBI agents in his initial 50-minute interrogation -- questioning that took place before he was Mirandized. He then received treatment for his burns. And five hours after his initial interrogation a second team of interrogators was brought in to question him. These interrogators were part of a "clean team," brought in to interrogate him after he was read his *Miranda* rights. The "clean team" began by reading Abdulmutallab his rights. And Abdulmutallab, advised of his right to remain silent, chose to exercise it.

# *Miranda Procedures*

- ▣ *Miranda Warnings* –
- ▣ (1) You have the right to remain silent;
- ▣ (2) Anything you say can be used against you;
- ▣ (3) You have the right to an attorney before answering questions;
- ▣ (4) If you cannot afford an attorney, one will be provided for you by the court.
- ▣ *Miranda Waiver* – Understanding these rights, do you wish to answer my questions?

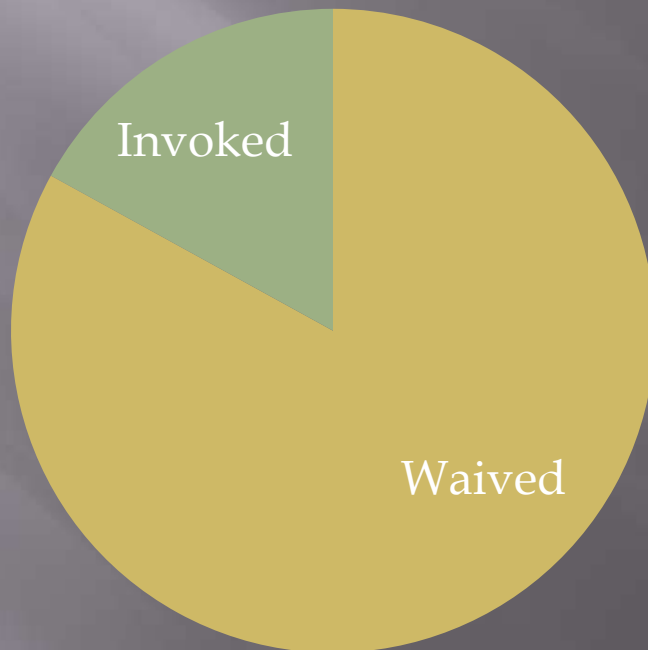
# Is giving *Miranda* warnings the best way to save lives?

- ▣ No reasonable person could doubt that starting out with "you have the right to remain silent" is *not* the way to save lives. Yet this is essentially the policy into which the Obama administration has locked itself by insisting that it did the right thing when it read Umar Farouk Abdulmutallab, the would-be Christmas Day bomber, his *Miranda* rights after only 50 minutes of questioning and a hospital visit.
  - ▣ Stewart Taylor, *More Miranda Idiocy*, Nat'l J., Feb. 13, 2010



# Does *Miranda* Reduce Interrogation Effectiveness?

## Invocation of Rights



Cassell & Hayman, *Police Interrogation in the 1990s: An Empirical Study of the Effects of Miranda*, 43 UCLA L. Rev. 839.

# Views on Questioning Under *Miranda*

- ▣ It would be “hard to interrogate” John Walker Lindh, the so-called American Taliban, “now that he has a lawyer and now that he is here in the United States.”
  - ▣ -- Eric Holder, 2002 CNN Interview
- ▣ The government “can’t run an interrogation . . . with [defense] attorneys present.”
  - ▣ -- Michael Ratner, Guantanamo detainee lawyer



# *The Public Safety Exception to Miranda*

- ▣ “In such a situation, if the police are required to recite the familiar *Miranda* warnings before asking the whereabouts of the gun, suspects in Quarles’ position might well be deterred from responding. . . . Here, had *Miranda* warnings deterred Quarles from responding to Officer Kraft’s question about the whereabouts of the gun, the cost would have been something more than merely failure to obtain evidence useful in convicting Quarles. Officer Kraft needed an answer to his question not simply to make his case against Quarles but to insure that further danger to the public did not result from the concealment of the gun in a public area.”
- ▣ -- *New York v. Quarles*, 457 U.S. 649 (1984).

# Public Safety Cases Dispensing With *Miranda* Warnings

- ❑ Police needed to find a handgun in empty grocery store at midnight. *Quarles*.
- ❑ Police asked whether suspect had needles in pocket before patdown search. *U.S. v. Webster*, 162 F.3d 308 (5<sup>th</sup> Cir. 1998).
- ❑ Police enter apartment, find body, and ask what had happened and whether others were hurt. *State v. Ramirez*, 871 P.2d 237 (Ariz. 1994).
- ❑ Police respond to report to gunshots, and see smoke and hear hissing sound; they question suspect about possible bomb and what it was made of. *In re Travis*, 674 N.E.2d 36 (Ohio App. 1996).
- ❑ Police arrest burglary suspect inside building with broken window and ask whether others involved in the crime. *Dice v. State*, 825 P.2d 379 (Wyo. 1992).

# Public Safety Cases Dispensing With *Miranda* Warnings – Terrorism Case

- ▣ New York police capture Arab terrorists who wanted to kill as many Jews as possible; possible bombing materials and pipe bombs seized; unMirandized questioning of terrorist about how the bombs were made and disarming the bombs proper. *U.S. v. Khalil*, 214 F.3d 111 (2d Cir. 2000).

# Attorney General Holder

- ▣ "We're now dealing with international terrorism. ... I think we have to give serious consideration to at least modifying that public-safety exception [to the *Miranda* protections]. And that's one of the things that I think we're going to be reaching out to Congress, to come up with a proposal that is both constitutional, but that is also relevant to our times and the threats that we now face."

# Warnings in England

- ▣ *You do not have to say anything unless you wish to do so but I must warn you that if you fail to mention any fact which you rely on in your defence in court, your failure to take this opportunity to mention it may be treated in court as supporting any relevant evidence against you. If you do wish to say anything, what you say may be given in evidence.*

# Questioning of Terrorists in Other Countries

- ▣ England -- U.K. legislation grants terrorist suspects the right to a legal advisor, but this right can be suspended for up to forty-eight hours and, when it is allowed, it can be ordered that a detained suspect is only to receive legal advice in the sight and hearing of a police officer.
- ▣ France – In cases of terrorism and narcotrafficking, the individual may not consult with an attorney until the seventy-second hour (after the second prolongation of detention). Further, criminal suspects in France do not have to be informed of their right to remain silent.



# Proposal

- ▣ 18 U.S.C. 3501A: “When a law enforcement officer questions any suspect arrested for terrorist offenses found in chapter 113B of Title 18, or comparable offenses under state law, a situation involving the public safety shall automatically be deemed to exist and the officer need not provide any advice of rights to the suspect. Any voluntary statements made by the suspect shall be admissible in any prosecution thereafter brought by the United States or by the District of Columbia.”

The rest of the story ... ?