

DOES THE RIGHT TO A LAWYER DISAPPEAR WITH MIRANDA?

Charlie Savage has a story explaining what the Administration means when it says it wants to “modernize” Miranda warnings. As he explains, it’s not just or even primarily Miranda warnings that are the problem (according to the Administration), but rather the requirement that a person arrested without a warrant be brought to court promptly.

President Obama’s legal advisers are considering asking Congress to allow the government to detain terrorism suspects longer after their arrests before presenting them to a judge for an initial hearing, according to administration officials familiar with the discussions.

If approved, the idea to delay hearings would be attached to broader legislation to allow interrogators to withhold Miranda warnings from terrorism suspects for lengthy periods, as Attorney General Eric H. Holder Jr. proposed last week.


The goal of both measures would be to open a window of time after an arrest in which interrogators could question a terrorism suspect without an interruption that might cause the prisoner to stop talking.

But there are two things missing from Savage’s article (and I don’t think it’s through any fault of his). First, an explanation of what the problem is.

I mean, even the Republicans haven’t been complaining about alleged terrorists appearing in court less than 48 hours after they were captured. And there are no allegations

that—say—Najibullah Zazi or Umar Farouk Abdulmutallab stopped talking because they got trotted out before a judge shortly after they were captured. And as far as Faisal Shahzad? As Savage points out, he reportedly waived his right to arraignment.

Officials have said that Mr. Shahzad waived those rights, as well as his right to a quick initial hearing before a judge, and has continued cooperating with interrogators. But, worried that suspects in future cases may not do likewise, or that law enforcement officials will be confused about the rules, the administration has decided to push for changes.

 In other words, Shahzad is—like the other recent terrorist suspects mentioned—evidence that this may not be necessary! (Note, reporters took notice of the delay in Shahzad’s arraignment—see here and here, for example.)

Then there’s the second thing missing from this discussion. Is anyone wondering where the discussion of the right to an attorney is? Who **is** Shahzad’s attorney?

The way it works, bmaz tells me, is you’re arrested and you’re brought before the judge (either to be charged or arraigned) and if you don’t have a lawyer, the judge makes sure you have one.

And as of right now, PACER doesn’t **list** an attorney for Shahzad.

Let’s return to the Miranda warning again:

You have the right to remain silent. Anything you say can and will be used against you in a court of law. **You have the right to an attorney. If you cannot afford an attorney, one will be appointed to you.** Do you understand these rights as they have been read to

you?

So I'm curious: the Administration wants to "modernize" Miranda. They want to postpone bringing alleged terrorists before a Court (though it's not clear why). Are they, by delaying court appearances, trying to at the same time delay the time when alleged terrorists get assigned lawyers? Are they trying to dissuade alleged terrorists from having lawyers?

One final thing. The big example where—if you ask terrorism prosecutors—the requirements of due process have been a problem, of late, was the *Hutaree* defendants. After getting public defenders, their lawyers challenged their detention without bail (which is under appeal). This big push to deprive alleged terrorists of due process—will it apply to domestic terrorists, with whom they've had such problems recently?