

David Rittgers

Miranda Doesn't Need Fixing

The attempted attacks by would-be airline bomber Umar Farouk Abdulmutallab and would-be Times Square bomber Faisal Shahzad opened a debate over the wisdom of reading a terrorism suspect his rights to remain silent and to an attorney under *Miranda v. Arizona*. Now U.S. Rep. Adam Schiff (D-Calif.) has proposed legislation that “allows unwarned interrogation of terrorism suspects for as long as is necessary to protect the public from pending or planned attacks.”

There are two serious problems with this proposal, one constitutional and one practical.

The constitutional issue is that even if this bill passes, it wouldn't mean much. Congress has tried to legislatively overrule *Miranda* before. The Supreme Court ruled in 2000 that the decision was a constitutional one, and therefore cannot be papered over by Congress. If the protection of *Miranda* is constitutional, presumably the scope is as well.

The practical objection is that *Miranda* doesn't need fixing.

The existing “public safety exception” to *Miranda*, approved in the 1984 Supreme Court case *New York v. Quarles*, is broad enough to cover emergencies created by terrorism plots.

The *Quarles* precedent comes from police officers responding to a rape call in Queens. The victim gave a description of her assailant, and told the officers that he was carrying a gun and had just entered a supermarket. One of the officers spotted the suspect, Benjamin Quarles, chased him down and discovered an empty shoulder holster that had held Quarles' revolver.

After handcuffing Quarles, the officer asked him where the gun was. Quarles nodded in the direction of some empty cartons and said, “The gun is over there.” The Supreme Court subsequently ruled that this

statement, made while Quarles was in custody but before police read him his rights, was admissible. The Court recognized that the exigency of a loose gun is a situation “where spontaneity rather than adherence to a police manual is necessarily the order of the day.”

Supporters of Schiff’s proposal to take Miranda out of play in terrorism cases will likely tell us that terrorism plots create dilemmas more serious than a revolver lying idle in the produce section.

What if the police had a bomb on their hands and only a recently captured terrorist knew how to defuse it? That’s not a hypothetical, and the answer isn’t to call Jack Bauer.

In 1997, NYPD officers raided an apartment where two men had constructed pipe bombs and planned to detonate them on a subway or bus terminal. During the raid, the police shot and wounded the bomb maker as he lunged for a black bag containing the explosives.

After bomb technicians discovered that a switch on one of the pipe bombs had been flipped, officers questioned the wounded bomb maker about the number of bombs, how many switches had to be flipped to set them off, whether there was a timer, what wires to cut to disarm them, and whether they were intended as suicide devices. The Court of Appeals for the Second Circuit let all of the answers come into evidence via the public safety exception.

The public safety exception is settled law and has been ruled on by every federal circuit and over half the states, allowing police to deal with all manner of emergencies. Courts have allowed questions about the existence or location of guns, bombs, assault or kidnapping victims still in danger, accomplices and their identities, and plans for future crimes.

Add to this the fact that statements given before Miranda warnings are still admissible to impeach a suspect who changes his story when he gets to court, and that physical evidence obtained without Miranda warnings remains admissible.

So, here's a practical proposal: the above list ought to be distributed to counterterrorism task forces across the nation. Instead of spending time and energy on a measure that is out of Congress' power, have government lawyers create a pamphlet to educate the local, state and federal officers who will capture tomorrow's aspiring terrorist. Boil down the law to bullet points and put it on a business card so that they have it on hand when the next emergency unfolds.

That's a tool first responders can use.

Save taxpayers the election-year posturing, and perhaps a few lives in the process.



David Rittgers's Biography

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