

## **MEMBERS OF THE SENATE HOLD A NEWS CONFERENCE ON FUNDING FOR THE TRIALS OF THE ALLEGED 9/11 CONSPIRATORS**

FEBRUARY 2, 2010

### **SPEAKERS:**

SEN. JOHN MCCAIN, R-ARIZ.  
SEN. LINDSEY GRAHAM, R-S.C.  
SEN. SAXBY CHAMBLISS, R-GA.  
SEN. JOHN BARRASSO, R-WYO.  
SEN. ORRIN G. HATCH, R-UTAH  
SEN. JEFF SESSIONS, R-ALA.  
SEN. JOSEPH I. LIEBERMAN, I-CONN.  
SEN. JIM WEBB, D-VA.  
SEN. BLANCHE LINCOLN, D-ARK.

GRAHAM: I'd like to thank all of my colleagues for coming. And each senator will address you here in a moment, but I thought I would kick it off.

I think you know what the subject matter is about. Why are we here? All of us have something in common on the stage today. We believe we're at war. The law enforcement model being used by the Obama administration should be rejected. We're not fighting a crime; we're fighting a war.

And to criminalize this war puts our nation at risk. The goals of domestic criminal law is to dispose of criminal charges. The goal of the law of armed conflict is to protect the security of nations within established rules.

The focus of the military justice system regarding enemy combatants is to lawfully collect intelligence, keep our enemies off the battlefield, and prosecute alleged war crimes. The military justice system is transparent, well-staffed, subject to civilian appellate review, and, above all else, built around the idea that we have been and are now continuing to be a nation at war.

The Military Commission Act of 2009 was improved through extensive discussions with the Obama administration and Chairman Levin. The Military Commissions Act of 2009 is truly a model justice system for the world.

The civil was unavailable for Richard Reid, the Blind Sheikh, and other terrorists. The purpose of this bill is to prevent the decriminalization of the War on Terror and withhold funding from the

Department of Justice to prosecute Khalid Sheikh Mohammed and the 9/11 co-conspirators in civilian court.

I believe it is inappropriate to give the mastermind of 9/11 full constitutional rights of an American citizen. We reject the law enforcement model. Civilian trials of non-citizen enemy combatants captured on the battlefield is a stark departure from past precedent, in fact, has never been used by our nation before.

Civilian trials are unnecessarily dangerous, messy, confusing, and expensive. Let me quickly elaborate on these points.

The use of civilian trials for the 9/11 co-conspirators is dangerous. Attorney General Mukasey, who was the presiding judge in the Blink Sheikh case of 1995, has spoken about this. He said in federal district court in Manhattan, the government was required to disclose the identity of all known co-conspirators.

One of these conspirators, relatively obscure in 1995, was Osama bin Laden. It was later learned that soon after the government's disclosure, the list of unindicted co-conspirators made its way to bin Laden in Sudan.

The civilian trials will be messy. Professor Scott Silliman, a former military lawyer who now teaches national security law at Duke said, "Civilian trials could be a total mess. It's going to be a tremendously complex trial. And do we really want to give KSM the biggest microphone in the world to spread his message of hate?"

The criminalization of the war is confusing for our troops and our intelligence community. They don't know what rules to use going forward. Just look at what happened with the Christmas Day bomber; an opportunity lost. Someone fresh off the battlefield failed in his attempt to kill innocent civilians, captured fresh off the battlefield in the War on Terror and, within less than an hour, read his Miranda rights, and shut up.

How much intelligence did we lose?

The law of armed conflict focuses on intelligence gathering because we need to know what the enemy is up to. It focuses on keeping the enemy off the battlefield and, finally, yes, prosecution. But in that order.

The civilian trials will be expensive. If you don't believe me, just look at Obama's budget. Hundreds of millions of dollars to try

to hold these trials in New York. Why in the world would this country take the people who planned 9/11, put them in the middle of 8 million people in New York City, less than two miles away from where they attacked the country, and think that's a good thing?

That makes absolutely no sense. That is putting the people of New York at risk for no reason, costing money for no good reason, giving the terrorists a microphone they don't deserve, and it puts this nation at risk.

Military commissions can be held at Guantanamo Bay quickly, securely, and led will add very little additional cost. I believe, like all of my colleagues, there's a better way. Enemy combatants should be held under the law of armed conflict from day one.

The military legal system is best able to gather intelligence, keep the enemy off the battlefield, and render justice. But most importantly, our military justice system is best able to protect the American people while adhering to our nation's values.

That's what drives our effort to introduce this legislation.

With that, I would introduce Senator McCain.

MCCAIN: I want to thank Senator Graham, who is a -- as many of you know, is a reserve legal officer in the United States Air Force and is as familiar with these issues as any member of the United States Senate, in fact, more so.

The fact is we should not try these people in New York. We shouldn't try them in Illinois. We shouldn't try them in Phoenix. We should try them in a courtroom in Guantanamo Bay, and we should try them according to the Military Commissions Act.

That's the thrust and the intent of this legislation.

Now, just last week, under the chairmanship of Senator Lieberman, we have the two chairs of the 9/11 Commission. We got into a -- before the committee. We got into a discussion, and Lee Hamilton said, when I -- in response to a question about this whole issue, he said, these people present a real challenge for us within our constitutional system. The problem is you've got a detainee. You can't prove a criminal charge against him, let us say, at the same time, he could kill you. It doesn't fit in the American constitutional system, and we haven't figured it out yet.

And, finally, he went on to say, "I think this is has been a failure of the U.S. government as a whole to deal with this very, very tough problem, and I certainly wish you well on it."

The issue of the treatment of detainees is one that has to be addressed. This is a first step. The next step is how we deal with enemy combatants that we can't put on trial and we can't release. And that cannot -- they cannot be released without our absolute assurance they won't reenter the fight.

Unfortunately, depending on who you talk to, 15 to 20 percent of those who we have released have reentered the fight; a couple of them in leadership positions. But this is a first step -- this legislation -- and I believe that we can, this time, win a vote on the floor of the United States Senate.

GRAHAM: Senator Lieberman?

LIEBERMAN: I join in thanking Senator Graham for his informed leadership in this matter. I'm proud to be here with this very broad group of colleague across party lines from the Senate.

Let me put this in recent historical context. In September of 2001, immediately after the attacks of September 11th, Congress authorized the use of all necessary and appropriate forces against those who, quote, "planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001," end quote.

That was the authorization for the use of military force. As close to a declaration of war as the United States has come since World War II.

No one, in my opinion, is more squarely covered by that congressional authorization of the use of military force and in the war or by the war we are fighting pursuant to that authority than Khalid Sheikh Mohammed, the self-proclaimed mastermind of the September 11th attacks and his co-conspirators.

These people are war criminals. They are not ordinary common criminals. As such, they should be tried as war criminals in the military commissions established by Congress and the administration. They should be treated as America always would, according to the rule of law. But the rule of law that they should be treated according to is the rule of the law of war because they are accused war criminals.

To try them as common criminals, giving them the constitutional rights of American citizens in our courts is justice according to

"Alice in Wonderland." It's common sense and justice turned upside down.

I know that justice is supposed to be blind, and it is in our country. But in this case, the application of justice cannot be blind to something else, which is the homeland security implications of trying these cases in a court -- in a federal court in New York.

And I want to speak briefly in my role as chairman of the Homeland Security Committee about that. As demonstrated by the recent fallout from the hasty decision to try Khalid Sheikh Mohammed in New York City without consulting either Secretary Napolitano, Police Commissioner Kelly in New York, or Mayor Bloomberg, holding terrorism trials in U.S. courtrooms in major cities or any cities will significantly increase the risk of terrorist attacks.

We almost invite terrorist attacks either planned by international terrorist groups or carried out as a self -- by self-radicalized home-grown jihadists. Those trials impose enormous cost to provide necessary security against those attacks.

Secondly, as Senator Graham has said, and I'll say it just briefly, putting Khalid Sheikh Mohammed in a public courtroom in full view of the public gives him a better platform than any member of Al Qaida has been given to recruit new members. And, remember, it's not just the ones who take off and go to train with Al Qaida and other terrorist groups, it's the people who sit at their computers, go on jihadist Web sites here in the United States, self-radicalize themselves, and then commit an act of violence.

I want to just bring this right to where we are today. The president's budget that was released yesterday shows how much these decisions will cost American taxpayers. In the budget, the Justice Department has given almost \$75 million to assist with the transfer and prosecution of Guantanamo detainees.

The Department of Homeland Security is compelled on allocate \$200 million in fund that would otherwise go to communities around the country in the urban area security initiative to provide cities where terrorism trials are to be held with additional cost for -- to meet enhanced security needs -- unnecessary expenditure of taxpayer money.

So bottom line, the way to avoid these risks is -- this is an unusual thing we're doing here. We're basically using Congress' power of the purse to stop these trials from occurring in a federal court in New York. They ought to occur at a military tribunal. And when they

do, they will not only meet the requirements of recent Supreme Court decisions, they will provide these accused with rights way beyond what the Geneva Convention requires.

Thank you.

GRAHAM: Senator Webb?

WEBB: Thank you.

Just a few brief words, first of all, to express my appreciation for all the yeoman work that Senator Graham has put into this legislation and into this issue over a period of years. Second of all, we're standing up here -- this is a bipartisan group. There are many people who have long experience in the law and on the Judiciary Committee. There are others such as Senator McCain and myself and Senator Graham who have also long experience with the military.

And there are basically two issues right now that we need to address very seriously in our country. The first is, for those individuals who are going to be tried, where are they going to be tried? Should they be tried in a civil court? Or should they be tried in the military commissions which we now have vastly improved through recent legislation?

And we, up here, and I think others have very strong feelings, as has been said, that this is not an appropriate type of crime to be tried in an American criminal court. It was costly. I think that there are people here who are on the Judiciary Committee who can have a more elaborate explanation of this. But I believe, when the attorney general was asked about the implications of a possible acquittal of one of these individuals, he did not get -- he did not give a very clear answer. I think his answer was something to the effect, well, we would continue to detain them.

So we run the risk of having very costly show trials that would benefit the international terrorist movement, and we also are not moving toward the proper sense of justice that we can get out of the process that we have now put together with these military tribunals.

The second issue before us, as Senator McCain mentioned, is what about these individual -- and there are almost 50 of them -- who we, right now, say will never get a trial? What are we going to do with them? And in this respect, I think we have confused place with process.

The issue is not Guantanamo. The issue is the process that we're going to use for these people. And I believe it would be extremely dangerous in our country to bring these people into Illinois, as is now being discussed, and to have them there for the next 10, 20 years to be used as a symbol for people of international terrorism as to these so-called inequities of the American system. I don't think they belong in our country, and I believe, at the right time, we can figure out a way to do something with Guantanamo.

But the first step in addressing this in a very serious way is for us to support Senator Graham's legislation and to stop this process of saying that we can try these very dangerous people as common criminals in the United States.

GRAHAM: Senator Sessions?

SESSIONS: Thank you, Lindsey. In your leadership and work on this and -- I would just say you are correct. The terrorists behind 9/11 are not entitled as a matter of law, Constitution, decency, or justice to be tried in civilian courts in the United States, and the history shows that.

And I recall one of the more dramatic events in hearings was when Senator Graham asked the attorney general before Christmas, if bin Laden were captured by a soldier, would he have to give him his Miranda rights. That's a very dramatic question. Very critical question.

And the attorney general waffled. He wouldn't say. He wouldn't give clear direction. And you have to have procedures to give clear directions to our military and investigators.

I would just say a couple of things briefly. The military commissions were developed post-9/11 to handle these cases. The Supreme Court, in Hamdan, found some defects and improprieties or errors in the way it was being done. The United States Congress and the United States military responded to those problems and fixed them.

And we were beginning to start the trials in military commissions, and we did so for six months until President Obama took office and stopped it by executive order. Now, he said, now -- you can go forward, but his commission created a presumption that persons at Guantanamo -- and it seems to be carrying over to new arrestees -- would be tried in civilian courts and not in military courts.

So I would just say that this is big mistake. It's just a big mistake. Perhaps, they're listening to the lawyer for Osama bin

Laden's driver who's now the deputy solicitor general in the Department of Justice who took the case up and found -- and succeeded in proving there were defects in the military commissions.

At any rate, we're at a point where we need to get this straight. There needs to be clarity. It's nothing wrong with trying these cases in military commissions, as the Attorney General Holder himself has explicitly stated. He just, as a matter of policy, said, we want to try them in federal court.

And it's wrong, and it needs to be reversed. And it's a big issue. It's not a small issue. It's important to the future of our country.

GRAHAM: Senator Lincoln?

LINCOLN: Well, good morning. I'm the brighter color among these dark suits.

(LAUGHTER)

And I'm here to really reemphasize many of the issues that have been brought up but, mostly, cost, security to our communities and to Americans as well as the appropriateness.

I do have very serious concerns about using the U.S. criminal justice system to try enemy combatants who are current detained at Guantanamo or who might be charged in the future with acts of international terrorism.

I believe these individuals are war criminals and that their alleged evils against our country warrant their trials in military court, as has been mentioned earlier here today.

Trying these conspirators in civilian court is giving them a public stage to advocate their cause. Carrying out these civilian trials also has the potential, I think, to compromise classified intelligence and put our national security at great risk, not to mention the American people at greater risk.

But simply put, granting alleged criminals of war the opportunity for trial in civilian court is dangerous. It's expensive. Senator Hatch and I have just been at a hearing earlier this morning in Finance Committee about the budget and the cost that we see for our nation ahead.

It's certainly not worth the risk to Americans to move forward in this way. I hope that the administration will reconsider the forum in which we choose to seek justice for the horrifying crimes of 9/11 and other plots against our country. But if not, this legislation will ensure that taxpayer dollars will not fund this giant risk to our national security and to the communities where those trials might be held.

That's all. I appreciate joining these handsome men in dark suits.

(LAUGHTER)

GRAHAM: Senator Hatch?

HATCH: Well, thank you. I don't know of anybody in the Congress who is more equipped or better prepared to bring legislation like this than Lindsey Graham. He takes these matters very seriously, as do all the rest of us. But he's in a position, as a judge advocate, as somebody who is learned in the law -- military law -- of, I think, bringing this matter forward.

I think we should listen to John McCain. I think we should listen to Jim Webb. We should listen to everybody up here who is prepared to support this legislation.

All I can say is that it's very dangerous to do what they were going to do. And when they figured it would cost -- well, all they had to do was look at the Zacarias Moussaoui trials. Very important trial but nowhere near as important as the Khalid Sheikh Mohammed trial will be.

That trial took four years. And when they started to realize it could take as many as four, five, or six years through our justice system at a cost of \$200 million a year or better, and with all the risks involved in New York City, the mayor, who has been supportive of the president and the people here, backed off and said, hey, this is not what we want. I don't know why any American city or any American community would want this trial in their communities.

Furthermore, treating these brutal murderers as mere criminals completely handicaps our intelligence agencies from gaining vital information to protect Americans. The Christmas bomber -- alleged bomber -- they interviewed him for 50 minutes before reading him his Miranda rights. Didn't consult with the FBI, the director of national security, or anybody else, for that matter -- CIA -- they just went

ahead.

Now, there's a lesson we can get from the Moussaoui trial, and it's one of the top reasons we need it use the military commission system to try the 9/11 plotters like Khalid Sheikh Mohammed and others.

In addition to Moussaoui's repeated outbursts and taunting of 9/11 surviving victims' families, the government mistakenly turn over classified material to him and his attorneys as part of the discovery process. Why would we allow that to happen in the case of Khalid Sheikh Mohammed? He could have access, perhaps, to classified material if the government is forced to use evidence gleaned from classified sources and methods.

Khalid Sheikh Mohammed was set to plead guilty in a military commission as the mastermind of the attack on 9/11. But on his first full day in office, the president issued an executive order suspending military commissions. I think that was a poorly considered decision.

I think the administration -- look, I think the president would do himself a great favor here if he would overrule and say we're not going to try these people here. We spent a fortune down there at Guantanamo creating a tremendous house to take care of these problems. We spent all kinds of time up here in Congress to make sure that the military commission situation -- statute -- would be corrected. I think the administration still has time to do the right thing when it comes to how these brutal terrorists are prosecuted.

But if they don't do the right thing, then I'm happy to, in a bipartisan way, force their hand with this type of legislation to cut the funding so that they have to do the right thing.

GRAHAM: Senator Chambliss?

CHAMBLISS: We are engage in a military conflict today in both Iraq and Afghanistan because of those individuals that planned and executed the attack on America on September the 11th killing over 3,000 people then. And it's because of those who planned and carried out that attack that we have suffered additional casualties and loss of life in both Iraq and Afghanistan.

The question is pretty simple. Should we treat those who planned the attack of September 11th differently than the way we treat those that American soldiers and other soldiers on the battlefield today are treated when they are captured? The simple answer is no; that we

should not give those who planned the attack of September 11th constitutional rights that are guaranteed to American citizens and treat them differently and more in line with way Americans are treated than we should those who seek to do harm to Americans on the battlefield.

It's pretty simple when it comes down to it. This legislation will stop the prosecution in New York City of the individuals who planned September 11th, and it will not give those individuals a platform from which to spew their venom towards America and Americans.

GRAHAM: Senator Barrasso?

BARRASSO: I want to thank Senator Graham for his leadership on this and thank this bipartisan group of senators for coming together because we all know that the people of America want to be safe and want to feel safe. And having a trial like this in New York City, to me, doesn't make the American people feel any safer or actually be any safer.

These terrorists deserve a military trial. They do not deserve a soap box and a microphone for which to spread a message to America and to the rest of the world. You know, yesterday, the president introduced his budget. He said anybody that has a good idea on how to get some savings into the budget, let us know.

Well, we all want to let the president know that there's a lot of savings to be had by not having these trials anywhere in the United States and keeping them in a military court. I think, basically, the attorney general got it wrong. He may be trying to send a message to our adversaries or to our critics.

It's time to send a message to the people of America. We want to keep you safe. We want to keep you free. And it's time to remove these trials from the United States criminal system.

GRAHAM: If there had been one more senator speaking, we'd have violated the Geneva Convention for reporters.

(LAUGHTER)

We made it.

QUESTION: Senator, can I ask a question of Senator Lincoln?

Senator, as somebody who is in a tough reelection battle this

year, do you think that the administration is being tone deaf in asking Democrats like you to spend hundreds of millions of dollars to bring detainees to the United States and try them in civilian court?

LINCOLN: I think I would be tone deaf if I didn't respond to both the people who I believe are very concerned about how this is happening and if I wasn't speaking out and speaking my mind. And that's why I'm here today. I think it is important for the administration to, hopefully, hear from those of us that do have great concerns, and I'm hoping, as I mentioned in my comments, that they will reconsider.

QUESTION: What are you (inaudible)?

LINCOLN: As I said, I think it's really cost. I think it's also security, and I think it's appropriateness. That's exactly what I hear from my constituency. The cost of what those trials would be levied on the people of this nation at a time when our economy needs to be put back on track.

The security -- people want to feel secure. And having these types of trials in our communities, whether they be large or small communities, they're still in the American -- the communities of American people.

And I think the appropriateness -- these are criminals. They're war criminals, and they need to be tried in the military courts.

GRAHAM (?): It's hard to bring people of New York City and Little Rock together, but they've managed to do that.

(LAUGHTER)

QUESTION: Senator Graham, two questions. One, what is the path forward (inaudible) filibuster legislation to your amendment is not voted on (inaudible)? And, secondly, the president, yesterday, called the opposition to civilian trials of these individuals, quote, "rank politics" pointing to other cases like al-Marri and others who were tried during the Bush administration in criminal courts.

And I'm wondering what (inaudible).

GRAHAM: Well, I would -- I would remind the president that myself, Senator McCain, and others objected to many of the moves made by the Bush administration in the War on Terror. In my view, they tried to cut corners in the law of armed conflict. They had some

ideas that I thought would come back to bite us in future wars, like withholding evidence from the accused, give it to the jury but never letting of the defendant see the evidence.

What do we say if that happened with one of our soldiers on trial? So I would tell the president -- I haven't played politics, Democrat versus Republican. I've tried to use my experience and judgment the best I can to find the right way forward.

How do you win this war living within your values? The president doesn't understand, in my view -- it's not about convicting a terrorist in a court. Yes, you could do this in civilian court. Khalid Sheikh Mohammed is going to plead guilty. It's about the system best able to protect the American people.

In military law, the last thing the commander thinks about when they capture somebody on the battlefield is, boy, what do we need to convict him. The first thing they think about is, one, keeping them off the battlefield so that enemy combatant will not kill one of his soldiers. The second thing he thinks about is what does this enemy combatant know about future military operations so that I won't lose any of my soldiers.

That's what the administration doesn't understand. The law of armed conflict is designed to protect nations at war. Criminal domestic law is designed to get outcomes based on criminal allegations.

Prosecuting war criminals is something that's been done over and over in our military legal system. And to those who suggest, by putting the accused in a civilian court, you're proving to America -- I mean, to the world -- that we're better, that would suggest putting someone in a military legal system is somehow an inferior process.

I reject that. I have been a military lawyer for 25 years. The same men and women who will administer justice to Khalid Sheikh Mohammed, the lawyers and the judges, are the same people that administer justice to our own troops. The same jurors who gave reasoned verdicts in the other Guantanamo Bay cases are the ones who will pass judgment on our own troops.

These are men and women who accept the risk of military service as lawyers. We should not put our civilian populations under that risk. So I'm not playing politics here. I am trying to find a way forward that makes sense, and I would end on this.

It makes no sense to capture someone fresh off the battlefield and, within 50 minutes, read them their Miranda rights and lose all the intelligence they possess to help us win this war. It makes no sense to risk disclosing classified information in a civilian criminal trial when the military system balances due process and national security better.

This whole process makes no sense. It's not about rank politics. It's about defending this nation within our values. And I hope and pray that the president will understand that, as commander-in-chief, he is pursuing a strategy that will weaken our national security.

I do not question his motives. I question his judgment.

MCCAIN: Could I also remind you that the Detainee Treatment Act and the Military Commissions Act was not agreed to by the Bush administration.

QUESTION: The president, yesterday, in the same question-and-answer session with (inaudible). He seemed to imply that the resistance against having these trials in civilian courts or in local municipalities was really built on fear-mongering.

MCCAIN: Well, I thought that the senator from Arkansas said it best. Americans are concerned not just about fear but they are concerned about process. They're concerned about cost. And they have, I think, legitimate reason to be concerned about a trial that requires hundreds of millions of dollars worth of security in probably the most heavily concentrated population areas of America and, certainly, there is no -- there's no outcome that could be quick under this kind of trial.

It would be a long, drawn-out process, costing hundreds of millions of dollars under the wrong venue when we have a courtroom in Guantanamo where they could be tried under military tribunals.

It makes perfect sense.

GRAHAM: If I may add, I don't think it's being a fear-monger to say that if you read -- if you use the law enforcement model -- which he's proposing -- the law enforcement model weakened our nation's security. Under the law enforcement model, you have to read someone detained their Miranda warnings.

The fact that, under the military law, you do not is a benefit to this nation. It makes no sense to lose valuable intelligence by reading a terrorist off the battlefield their Miranda rights. You

should hold them, detain them, and gather military intelligence.

That's not spreading fear. His solution to the problem is losing valuable intelligence. That's just a fact. And I reject that. I reject that this is rank politics. I reject that we're spreading fear.

What we're trying to do is protect the nation within a legal system that's designed to fight wars and not use a legal system designed to prosecute criminals. It's that simple.

MCCAIN: Could I just -- could I also remind you that I have some experience with interrogations. And 50 minutes doesn't get all the information you need.

QUESTION: What is your concern that Alexandria will be chosen as the location for these 9/11 trials? And, Senator Lieberman, there's some reporting this morning that New Haven is under (inaudible) as well.

What will you do if, in fact, (inaudible)?

WEBB: First of all, let me make a clarification here on this issue and whether it supposedly has been politicized. Number one, I wrote that article on 9/12/01 talking about how to move forward in the war against international terrorism when I said these people are war criminals. These people view themselves as soldiers, and they should be tried and treated that way.

The report that we heard last week is really disturbing. We heard last week that they were considering trying the Bali bomber in Northern Virginia. You know, this is an individual who was a part of an Indonesian terrorist group, who conducted a bombing in Indonesia. The Indonesian government has already executed three participants on that. We know that there will be, you know, some form of proper justice. From my perspective, they want to try him in Indonesia.

What are we going to do? Why should we be trying everyone accused of war crimes -- international terrorist war crimes around the world in the United States system? It would bog us down. It would raise all the security issues that Senator Graham and others have raised about New York. And it would not be appropriate to the criminal justice system of the United States.

LIEBERMAN: Yes. I've heard the story about New Haven. Look, this is -- we start here with a matter of principle that all of us

have stated. It's not a question of New York, although New York, obviously, was hit on 9/11. It's -- we know it's a target for Al Qaida and other terrorist groups.

But no matter what city in America, large or small, the federal government -- Justice Department decided to try accused terrorists, I would say it was wrong. And I want to come back to the fear-mongering question.

The best response to this is from Commissioner Ray Kelly of the New York Police Department. He's not involved in politics. He's got a job to protect the security of the people of New York.

Incidentally, the NYPD has the best counterterrorism operation in America outside the federal government. And he made a reasoned judgment. It's going to cost \$200 million -- that's how serious he thinks the threat is -- in one year. They think, if it goes five years, it'll cost a billion dollars. That's a professional calculation on the threat to the security of the people of New York. It's not fear-mongering. It's just hard fact and reality.

QUESTION: Senator, why is it that our allies are able to stage terrorist trials in criminal and civilian courts? Yet you're reluctant to do so? What's (inaudible)?

GRAHAM: Well, to our friends abroad, number one, we've lost 3,000 American citizens as a result of an Al Qaida-planned attack. The president said we're at war with Al Qaida. He said that a few weeks ago. If you're at war with somebody, then you will use the law of armed conflict.

Our European allies are changing their legal systems. The Scottish bombing attempt -- they had to change their ability to hold someone without trial...

QUESTION: You mean the Lockerbie trial?

GRAHAM: Yes. The Lockerbie trial -- no, no. Excuse me, the recent terrorist attack in Scotland. So what they're having to deal with in Europe is a real problem. Under criminal law, you can't hold someone indefinitely without trial. You have to charge them within a reasoned period of time, and you have to have a trial.

Under military law, you're not focusing on prosecutions; you're focusing on intelligence gathering. So you and Great Britain and other nations are literally changing your domestic criminal law to try

to accommodate this dilemma.

America should not have this dilemma because we're at war with Al Qaida. Under the law of armed conflict, you can hold an enemy combatant indefinitely without trial because the purpose of detaining the enemy combatant is to gather intelligence and keep them off the battlefield.

I would argue that the dilemma people are facing in Europe with terrorist suspects is going to undermine the security of those nations. And if we'll adopt the law of armed conflict model, we will have legal standing and hold our heads up high as to who we try and who we keep because, as Senator McCain said, at least 50 of the detainees will never see a courtroom -- military or civilian.

And under domestic criminal law, that is unavailable to a nation -- our nation. But under military law, you can keep an enemy prisoner off the battlefield as long as he's dangerous. And I think about this. Isn't it ridiculous if you're at war to capture an enemy prisoner and let them go at an arbitrary passage of time?

You don't have to have that -- make that decision in the law of armed conflict. Under domestic criminal law, you do.

So the consequences of the president's decision are scaring people, not politicians. And the consequences of these decisions, I think, are to criminalize the war. And you lose a lot of security for nothing to be gained.

Thanks very much.

END