Union, Kansas Cattlemen's Association, Kansas Farmers Union, Livestock Marketing Association, Louisiana Farm Bureau Federation, Maryland Farm Bureau, Michigan Asparagus Advisory Committee.

Michigan Farmers Union, Minnesota Farm Bureau Federation, Minnesota Farmers Union, Missouri Farmers Union, Mississippi Farm Bureau Federation, Montana Farm Bureau Federation, Montana Farmers Union, National Catholic Rural Life Conference, National Consumers League, National Family Farm Coalition, National Farmers Organization, National Farmers Union, National Onion Council, National Potato Council, Nebraska Farmers Union, New York Farm Bureau, New York Beef Producers' Association, New York State Forage & Grassland Council, New Jersey Farm Bureau, Nevada Livestock Association.

North Dakota Farm Bureau, North Dakota Farmers Union, North Idaho Cattlemen's Association, Northwest Horticultural Council, Ohio Farm Bureau Federation, Ohio Farmers Union, Oklahoma Farmers Union, Oregon Farm Bureau Federation, Oregon Farmers Union, Organization for Competitive Markets, Public Citizen, Pennsylvania Farm Bureau, Pennsylvania Farmers Union, Ranchers-Cattlemen Action Legal Fund (R-CALF USA), Rhode Island Farm Bureau Federation, Rocky Mountain Farmers Union, South Carolina Farm Bureau.

South Dakota Farm Bureau Federation, South Dakota Farmers Union, Southern Colorado Livestock Association, Texas Farmers Union, United Fruits and Vegetable Association, Utah Farmers Union, Virginia Farm Bureau, Washington Farmers Union, Washington State Farm Bureau, Western Organization of Resource Councils (WORC), Wisconsin Farmers Union, Wyoming Farm Bureau Federation, Wyoming Stock Growers Association.

NOVEMBER 6, 2001.

DEAR SENATOR: When the Senate takes up the 2001 farm bill, please support legislation to require country-of-origin labeling at retail for meat products and fresh fruits and vegetables. Senator Tim Johnson (D–S.D.) has introduced this legislation as S. 280, the Consumer Right to Know Act of 2001. Please oppose efforts to water down country-of-origin labeling legislation by allowing domestic origin labels on beef that has been slaughtered and processed—but not born—in this country.

While not a food safety program, country-of-origin labeling will give consumers additional information about the source of their food. As a matter of choice, many consumers may wish to purchase produce grown and processed in the United States or meat from animals born, raised and processed here. Without country-of-origin labeling, these consumers are unable to make an informed choice between U.S. and imported products. In fact, under the Agriculture Department's grade stamp system, they could be misled into thinking some imported meat is produced in this country. Country-of-origin labeling may also assist small producers, many of whom are suffering from low prices, consolidation among processors, and weather-related problems.

Several food industry trade associations and two farm organizations have proposed a voluntary ''Made in the USA'' label for retailers who want to promote and market U.S. beef. Their effort falls short on two counts. First, industry already has voluntary labeling authorization and it has not resulted in country-of-origin labeling for beef. In addition, the industry proposal allows meat from cattle that have been in this country for a few as 100 days to be labeled ''U.S. Beef.'' This could mislead consumers into thinking a product is of U.S. origin when, in fact, it is not. Meat products identified as ''U.S. Beef'' or ''Made in the U.S.A.'' should originate from animals born, raised, slaughtered and processed here.

When country-of-origin labeling is discussed, two additional issues invariably come up: cost and trade retaliation. On cost, the General Accounting Office concluded that country-of-origin labeling would increase costs for both industry and government but that ''the magnitude of these costs is uncertain.'' Federal law, however, already requires country-of-origin markings on the packaging of all meat and produce imported into this country. In addition, slaughter plants already segregate beef carcasses by grade and grade levels already following products to the retail level. How costly would it be to expand these efforts to include country-of-origin labeling at retail? In Florida, which has had country-of-origin labeling for produce since 1979, it reportedly costs less than $10 per month per store. In terms of compliance, Florida says its program is ''not costly if conducted by the same inspection authority that is usually in food stores.'' Florida put statewide industry compliance costs for country-of-origin labeling through 1998 at less than $300,000 per year. Costs of this magnitude would be a reasonable trade-off to assure accurate labeling of meat and fresh produce.

On trade, numerous foreign countries have their own country-of-origin labeling requirements for perishable agricultural commodities. Twenty-two of our own trading partners—including Canada, Mexico, Japan and many members of the European Union—have country-of-origin labeling for produce. If our trading partners have these requirements, why shouldn't we? In addition, many other consumer products, including automobiles, must meet country-of-origin labeling requirements in this country. Why should agricultural products be exempt?

Many polls, including a 1998 CBS News poll and two polls by the National Cattlemen's Beef Association, have found overwhelming consumer support for country-of-origin labeling. In Florida, more than 95 percent favor labeling produce by country of origin.

Earlier this fall, the House of Representatives included country-of-origin labeling for produce as part of its farm bill. The amendment adding this provision passed by a wide margin. Please support S. 280 or similar legislation when the Senate debates its farm bill.

ARTHUR JAEGER,
Consumer Federation of America.
PATTY LOVERA,
Public Citizen.
LINDA GOLODNER,
National Consumers League.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, I ask unanimous consent that I might be able to proceed for about 3 minutes as in morning business.

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

MILITARY TRIBUNALS

Mr. LEAHY. Mr. President, over the past few weeks, the Committee on the Judiciary has examined the administration's proposal to use military tribunals to try suspected terrorists. I think our work has been very helpful and productive. We used the constitutional oversight powers of the Senate to hold a series of hearings on a number of recent developments. Assistant Attorneys General asked to testify and we accommodated them. The Attorney General responded to a bipartisan request and we accommodated him with respect to the date and timing of his participation. We had a dialog on the question of military tribunals. We heard from other witnesses at our earlier hearings and through the course of the last few weeks informally from literally thousands of people.

We did this because it appeared to many of us that we had sort of a unilateral edict on the part of the administration regarding military tribunals. We were hearing, from the left to the right, concern that it was so unilateral that it might not stand constitutional muster. So in seeking as many voices on this as possible, we heard from some who endorsed wholeheartedly the use of military tribunals, others who said we should only use our court system—the tried and tested method of the court system, and still others who said—and I find myself in this category—sometimes military tribunals can be appropriate provided they are duly authorized and provided there are reasonable limits and proper safeguards for them.

I will put in the RECORD a copy of a letter from a large number of lawyers and law professors on this issue, and also a summary of some of the things we found in our committee hearings. I also include a proposal. I put this in the RECORD because I know Senators have been considering proposals for a military tribunal. Several Members of both parties have come forward with very constructive suggestions. I want to make sure if we are going to use military tribunals, we bring the procedure into compliance with international law, but with treaty obligations we have elsewhere. I want to make sure we set out very clearly the question of what our limits are, what the U.S. says about military tribunals.

We all know our various Presidents over the years have had to call other countries and say: You are holding an American. You can't put that American before a secret military tribunal. There have to be safeguards and we have to know what is going on. Certainly, you must carry out your own laws, but let's do it in the open and make sure they have a chance to speak, that they know what the evidence is against them, and that they have a chance for appeal.

A military tribunal is not a court-martial. Our courts-martial in the United States follow very specific procedures—in fact, some of the best in the world. If it is simply a question of these being, in effect, a court-martial, I don't think there would be any problem.

But what is a military tribunal? Senators have asked: Does it mean that a bare majority, or even less, could vote for the death penalty? What is the standard of proof? Is it mere suspicion, or is it preponderance of the evidence,

or is it beyond a reasonable doubt? Does the person accused have any chance to give any kind of a defense? These are all issues that should be laid out.

If we are going to use military tribunals, let's make sure we are putting forth the best face of America. We have so much for which to be proud. We have a great deal to be proud of in our civil courts and in our military courts. At a time when we are asking nations around the world to join us in our battle against these despicable acts of terror—the acts we saw on September 11 in New York, the Pentagon, and in a lonely field in Pennsylvania—as we properly and appropriately defend ourselves and seek to eradicate the source of this terror, let's make sure, as we line up countries around the world to join us in that battle, that we keep those countries as our allies for further battles. Even after bin Laden is gone—and eventually he will be—there will be other terrorists—if not now, in later years. We want to make sure that countries join with us in the battle against terrorism, respecting the fact that we uphold our Constitution and our highest ideals as Americans.

THE CONTINUING DEBATE ON THE USE OF MILITARY COMMISSIONS

Assistant Attorney General Chertoff testified on November 28 before the Senate Judiciary Committee that ''the history of this Government in prosecuting terrorists in domestic courts has been one of unmitigated success and one in which the judges have done a superb job of managing the courtroom and not compromising our concerns about security and our concerns about classified information.''

I am proud that the Senate Judiciary Committee is playing a role in sponsoring this national debate, and I appreciate the participation and contributions of all members of the committee—no matter their point of view. Leading constitutional, civil rights and military justice experts have generously shared their time and analyses with the committee, as well as the Attorney General and other representatives of the Department of Justice. No one participant, no one person, and no one party holds a monopoly on wisdom in this Nation. I know that spirited debate is a national treasure. I know what the terrorists will never understand, that our diversity of opinion is not a weakness but a strength beyond measure.

I do not cast aspersions on those who disagree with my views on this subject. I do not challenge their motives and seek to cower them into silence with charges of ''fear mongering.'' I challenge their ideas, and praise them as patriots in a noble cause.

Already, our oversight has provided a better picture of how the administration intends to use military commissions. According to William Safire of the New York Times, Secretary of Defense Donald Rumsfeld called the discourse over military commissions ''useful'' and is reaching outside the Pentagon for input. It now appears that the administration is reconsidering some of the most sweeping terms of the President's November 13 military order. On its face, that order has broad scope and provides little in the way of procedural protections, but the more recent assurances that it will be applied sparingly and in far narrower circumstances than is suggested by the language of the order have been helpful. While the Judiciary Committee hearings were ongoing, the administration clarified its plans for implementation of the military order in five critical aspects.

First, as written, the military order applies to non-citizens in the United States, which according to testimony before the committee would cover about 20 million people. Two days after we began our series of hearings, the President's counsel indicated that military commissions would not be held in the United States, but rather ''close to where our forces may be fighting.'' Anonymous administration officials have also indicated in press reports that there is no plan to use military commissions in this country but only for those caught in battlefield operations.

Second, the White House counsel has also indicated that the order will only apply to ''non-citizens who are members or active supporters of al-Qaida or other international organizations targeting the United States'' and who are ''chargeable with offenses against the international laws of war.''

Third, while the military order is essentially silent on the procedural safeguards that will be provided in military commission trials, the White House counsel has explained that military commissions will be conducted like courts-martial under the Uniform Code of Military Justice. I have great confidence in our courts-martial system, which offers protections for the accused that rival, and in some cases even surpass, protections in our Federal civilian courts and includes judicial review.

Fourth, nothing in the military order would prevent commission trials from being conducted in secret, as was done, for example, in the case of the eight Nazi saboteurs that has most often been cited by the administration as its model for this order. However, Mr. Gonzales assured us that ''Trials before military commissions will be as open as possible, consistent with the urgent needs of national security.'' Mr. Chertoff's testimony before the committee was along the same lines.

This is in sharp contrast to the statements before our hearings that the ''proceedings promise to be swift and largely secret, with one military officer saying that the release of information might be limited to the barest facts, like the defendant's name and sentence.''

Finally, the order expressly states that the accused in military commissions ''shall not be privileged to seek any remedy or maintain any proceeding, directly or indirectly . . . in (i) any court of the United States, or any State thereof, (ii) any court of any foreign nation, or (iii) any international tribunal.'' Yet, the administration's most recent statements are that this is not an effort to suspend the writ of habeas corpus.

These explanations of the military order by both anonymous and identified administration representatives suggest that, one, the administration does not intend to use military commissions to try people arrested in the United States; two, these tribunals will be limited to ''foreign enemy war criminals'' for ''offenses against the international laws of war''; three, the military commissions will follow the rules of procedural fairness used for trying U.S. military personnel; and four, the judgments of the military commissions will be subject to some form of judicial review. We hope that the Attorney General's responses to written questions from the committee will continue to clarify these critical matters.

The administration apparently contends that an express grant of power from this Congress to establish military commissions is unnecessary. The Attorney General testified before the Judiciary Committee on December 6 that, ''the President's power to establish war-crimes commissions arises out of his power as Commander in Chief.'' A growing chorus of legal experts casts doubt on that proposition, however. Nevertheless, the administration appears to be adamant about going it alone and risking a bad court decision on the underlying legality of the military commission. Why take a chance that the punishment meted out to terrorists by a military commission will not stick due to a constitutional infirmity in the commission's jurisdiction?

I have received a letter signed by over 400 law professors from all over the country, expressing their collective wisdom that the military commissions contemplated by the President's Order are ''legally deficient, unnecessary, and unwise.'' More specifically, these hundreds of legal scholars point out that Article I of the Constitution provides that Congress, not the President, has the power to ''define and punish . . . Offenses against the Law of Nations.'' Absent specific congressional authorization, they say, the order ''undermines the tradition of the Separation of Powers.''

At our last hearing with the Attorney General, some of my colleagues on the other side of the aisle suggested that the administration had ''essentially won'' the argument on military commissions. This impression is wholly mistaken and I would urge my colleagues to review the record of the hearings before the Senate Judiciary Committee on this issue.