

system is broke across the board. Units are transferred in and out. There are no SOPs [standard operating procedures] . . . and each unit acts differently."

Apparently, because these units failed to follow Army procedure, Naseer's death was never reported up the chain of command. Yet, Lt. Gen. Mikolashek's report on detainee operations inspection, released in July of this year, conclusively stated that the team "that visited Iraq and Afghanistan discovered no incidents of abuse that had not been reported through command channels; all incidents were already under investigation." We now know that this statement cannot be accurate. What we do not know is whether and how many other deaths, let alone cases of abuse, may have gone unreported.

I also have new questions about the Defense Department's involvement in the "ghost detainee" matter. The Fay-Jones report revealed that the ghost detainee problem in Iraq was far more pervasive than the Defense Department had previously acknowledged, but that report placed much of the blame on the CIA. The L.A. Times story, however, accuses U.S. Special Forces commanders in Afghanistan of using local jails to hide prisoners off of the official roles.

In order to better understand the situation in Afghanistan, and the role of the Department in monitoring the actions of forces on the ground, I ask that you respond to the following questions by October 8, 2004.

1. Please explain how the Special Forces base at Gardez was allowed to operate with no recordkeeping requirements or Standing Operating Procedures (SOPs).

2. Did any official policy allow Special Forces units to suspend normal recordkeeping requirements or chain of command reporting while operating in Afghanistan or Iraq?

3. Did any official policy allow Special Forces units to detain prisoners in local Afghan jails, or in any other undisclosed facilities?

4. Mr. Coffey's quote above suggests that an unknown number of detention centers have operated or are now operating in Afghanistan with total impunity. In light of the allegations raised in the L.A. Times story, what actions is the Pentagon taking to investigate the situation and resolve the problems?

5. In the absence of recordkeeping and SOPs, do you agree that none of the ongoing or completed Pentagon investigations can claim to have uncovered all allegations of abuse?

6. Are any other government entities, such as the CIA or other intelligence agencies, involved in the operation of these detention centers or in the treatment or interrogation of prisoners? If so, please describe the agencies and their role. If the answer to this or any other question contained in this letter is classified, please submit your answer in classified form and make it available to appropriately cleared staff.

As stated above, I request that you answer these questions by October 8, 2004. Thank you for your prompt attention to this matter.

Sincerely,

PATRICK LEAHY,
Ranking Member.

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, October 1, 2004,

Hon. John D. Ashcroft,
Attorney General, Department of Justice,
Washington, DC.

DEAR ATTORNEY GENERAL ASHCROFT: We write to express our deep concern about the report in yesterday's Washington Post that

the Department supports the "rendition" of detainees to nations where they are likely to be tortured.

The United States is a party to the Convention Against Torture, which provides that "No State Party shall expel, return or extradite a person to another State where there are substantial grounds for believing he would be in danger of being subjected to torture." Since 9/11, there have been numerous reports that detainees in the custody of U.S. military or intelligence officials have been transferred for interrogation to governments known to torture prisoners. According to such reports, detainees who refuse to cooperate with U.S. interrogators have been "rendered" to foreign intelligence services in Saudi Arabia, Jordan, Morocco, Syria, and other countries that practice torture. One report stated that Deputy Attorney General Thompson approved the rendition to Syria of a Canadian citizen, who was confined in a small dark cell for a year and beaten on his palms, wrists, and back with an electric cable. Syrian officials later released him, telling reporters they found no link to Al Qaeda.

Until now, Administration officials have denied any involvement in this practice. At a Senate Armed Services Committee hearing on May 11, Undersecretary of Defense for Intelligence Stephen Cambone testified that "to the best of [his] knowledge" the Administration was fully complying with all legal requirements and that all reports of U.S. officials engaging in the practice of rendition were false.

Yesterday's report, however, states that the Department is urging House Republicans to include provisions in the 9/11 intelligence reform legislation authorizing the practice of renditions. Sections 3032 and 3033 of the bill, H.R. 10, would require the Secretary of Homeland Security to issue new regulations to exclude certain non-citizens from the protection of the Convention Against Torture. The changes would increase the burden of proof on any person being deported or rendered to establish "by clear and convincing evidence that he or she would be tortured," and would deny the jurisdiction of courts to review the new regulations or claims brought under the Convention Against Torture by aliens at ports of entry.

These changes would violate longstanding U.S. law and policy, undermine basic humanitarian and human rights standards, expose U.S. soldiers and citizens traveling abroad to greater danger, and further weaken America's standing in the world.

Yet the spokesman for House Speaker Hastert is quoted in the report as saying that the Department "really wants and supports" these provisions. Department spokesman Mark Corallo was also quoted as saying, "We can't comment on any specific provision, but we support those provisions that will better secure our borders and protect the American people from terrorists."

No Department official should express support, either openly or behind the scenes, for provisions that so clearly violate fundamental human rights. Torture defies our laws and stains our ideals. The abuses at Abu Ghraib prison have been a major setback in the war on terrorism. An essential part of winning that war and protecting the country for the future is respect for the ideals that America stands for at home and throughout the world.

The Department has already undermined those ideals by issuing legal memoranda attempting to weaken the definition of torture and eliminate restraints imposed by U.S. laws and international treaties on the conduct of Executive Branch officials. We urge you to repudiate immediately and without qualification the Department's support for

sections 3032 and 3033 in the House legislation, and to put an immediate halt to any Administration involvement in the illegal practice of rendition.

Sincerely,

EDWARD M. KENNEDY,
U.S. Senator.
PATRICK LEAHY,
Ranking Member.

MEDICARE MODERNIZATION ACT

Mr. HATCH. Mr. President, I have to respond to the outrageous charges made by my colleagues on the other side of the aisle regarding the Medicare statement I delivered yesterday.

I was disturbed by several remarks, especially that seniors have flatly rejected the Medicare prescription drug benefit. How is that even possible when the drug benefit doesn't even go into effect until January 1, 2006?

How is that possible when many Medicare beneficiaries are participating in the Medicare Drug Discount Card and have seen savings in their drug costs up to 20 percent per drug? I do not see that as an outright rejection at all.

My colleagues need to be careful about their charges, especially when they do not have the facts to back them up. I also take issue with my colleague's assertion that our prescription drug law is only a drug law in name. What does he mean by that?

Let me remind the Senator from Illinois that because of this new Medicare prescription drug law, 40 million Medicare beneficiaries will have drug coverage if they want it. The bill provides generous subsidies to low-income Medicare beneficiaries who, today, cannot afford to purchase drugs.

Prior to enactment of the Medicare Modernization Act, these beneficiaries had to make tough choices between buying their prescription drugs and putting gas in their cars. Or buying prescription drugs or putting food on the table. Or buying prescription drugs or paying their rent. Once the Medicare prescription drug plan goes into effect on January 1, 2006, those Medicare beneficiaries will no longer have to worry. And another point that needs to be raised regarding this matter—if there were any proposals that deserve to be recognized as offering a drug benefit in name only, it's the two Democratic plans of two years ago—plans supported by 50 and 45 Democrats respectively, including the Democratic Leader and Senator KERRY.

My colleague, Senator GRASSLEY, described those plans a few days ago, but let me take a few minutes to recap. The first Democratic plan had a drug benefit that lasted just six years. Talk about offering a drug benefit in name only.

The second plan didn't even offer a benefit to the vast majority of beneficiaries. Seventy percent of beneficiaries would not have received any basic coverage. A plan that shuts out the vast majority of beneficiaries—how can you call that a drug benefit? Guess what those 70 percent got.

You are not going to believe this—a five percent discount on their drugs. Once they spent \$3,300 out of pocket, they could qualify for catastrophic coverage.

Some have taken issue with the MMA, saying that the “benefit” stops after an initial coverage amount. I would like to remind my colleagues on the other side of the aisle that their basic benefit would have never even started for 70 percent of beneficiaries! Talk about a doughnut hole; these beneficiaries didn’t even get a doughnut!

The Congressional Budget Office estimated that 66 percent of beneficiaries wouldn’t meet the \$3,330 threshold—again, for these folks, the only help they would get was a five percent discount! A five percent discount!

I was also extremely disappointed by the arguments made by the Senator from Illinois and the Senator from California against what some have termed the “non-interference” provision. As I outlined, this provision has been included in the most prominent Democrat initiatives, starting with the Clintons’ Health Security Act over a decade ago. Despite that fact, here we are again listening to arguments against it. Apparently, what was good in a Democratic administration is bad in a Republican one.

And what was good in a Democratic Senate is bad in a Republican Senate during an election year. It is almost as if my colleagues were not listening to what I said. The argument that there is no authority for the federal government to bargain with the pharmaceutical companies is getting to be a tired argument. Again, let me repeat myself from yesterday.

First, the Democrat-sponsored bill from 2000, introduced by Senator Tom Daschle and supported and cosponsored by 33 Senate Democrats, had a specific provision which stated the following:

In administering the prescription drug benefit program established under this part, the Secretary may not (1) require a particular formulary or institute a price structure for benefits; (2) interfere in any way with negotiations between private entities and drug manufacturers, or wholesalers; or (3) otherwise interfere with the competitive nature of providing a prescription drug benefit through private entities.

Again, this provision is from S. 2541, the Medicare Expansion for Needed Drugs, a bill that was introduced by Senator DASCHLE and cosponsored by 33 Democrats, including not only Senator KERRY but also Senator DURBIN and Senator BOXER who spoke against it on the floor yesterday.

Now, it is every Senator’s right to change his or her mind, but you would think we would hear some discussion about the basis for this flip-flop. Instead, there is much dialogue about the so-called “evil” pharmaceutical companies, and virtually no admission that many Democrats, many prominent Democrats, have been on record in favor of the provision they now castigate.

And what is even more outrageous is the fact that they are the ones who first came up with the concept.

When I hear my colleague from California talk about how the Medicare drug law does not do much for seniors, let me just remind my colleagues on both sides of the aisle that she is sadly mistaken.

On the contrary, the Medicare prescription law improves health care coverage for Medicare beneficiaries by first, giving them the option to have prescription drug coverage, something that they do not have today and something Medicare beneficiaries have wanted for close to 40 years!

In addition, the MMA provides beneficiaries new preventive health benefits including a first-time, Welcome to Medicare Physical Examination, cardiovascular and diabetes screening and improved payments for mammography.

It also provided rural health care providers with increased reimbursement so they may continue to provide Medicare beneficiaries living in rural areas with quality health care. I don’t know about California or Illinois, but that is most welcome in Utah!

It also provides beneficiaries with a choice in coverage. Seniors will be able to choose the drug benefit that best suits their needs, rather than be forced in a one-size fits all government plan which is what many of my colleagues on the other side of the aisle support.

Another important provision in the bill helps all Americans by offering them Health Savings Accounts, HSAs. HSAs are tax-advantaged savings accounts which may be used to pay for medical benefits. The inclusion of these new accounts is a significant part of the Medicare law.

Allowing individuals to take charge of their own savings for future health care expenses is an important and necessary change in the direction of our health care policy, and is one that I support strongly.

Another point raised by my colleague from California is the doughnut hole. I think she called the doughnut hole a “benefit shutdown.” I agree that the MMA law is not perfect and, yes, this is an area I wish we could have improved upon. But calling it a “benefit shutdown” is not only wrong, it is deceptive.

The reason it is wrong to call the doughnut hole a “benefit shutdown” is that it would not affect the majority of seniors, and since our first responsibility is to take care of the very poor beneficiaries, that is entirely fitting. In fact, the Congressional Budget Office told us that only one-quarter of Medicare beneficiaries will have spending that actually reaches the non-coverage window of the doughnut hole.

Finally, let me remind my colleague from California that the Medicare prescription drug amendment the Democrats brought to the floor in 2002 sunsetted the Medicare prescription drug program. My good friend from Iowa, Senator GRASSLEY, the Chairman

of the Senate Finance Committee was talking about this irony the other day on the floor.

Let me recap what Senator GRASSLEY said.

When we were considering the Medicare Tripartisan bill on the Senate floor on 2002, the first Graham-Kennedy Medicare proposal was not permanent. Let me read the language from their proposal:

“No obligations shall be incurred, no amounts shall be appropriated and no amounts expended, for the expenses incurred for providing coverage of outpatient drugs after December 31, 2010.”

Isn’t that just remarkable? And they are calling the MMA a drug plan in name only? Who are they trying to kid?

The fact that the Graham-Kennedy proposal offered a drug benefit that ended 6 years after it started is unbelievable. But they sunsetted the benefit to hide the true cost of their proposal.

At the time, the Congressional Budget Office said it would cost over \$100 billion each year to extend the Graham-Kennedy drug benefit past the sunset—\$100 billion a year without a plan to pay for this enormous cost!

And the argument made about the MMA not going into effect until after the election is just more election year political jabber. That is a ridiculous charge, one that does not even warrant a response. But I will respond to it by saying that it takes time to put together a benefit that will cover over 40 million Americans.

It takes time to do it correctly. The agency in charge of the Medicare program needs time to implement the MMA regulations, accept bids from plans that wish to participate in the Medicare Advantage programs and, most important, it takes time to educate Medicare beneficiaries about the options that will be offered to them.

And let me remind all of you that even the Democrat proposals that have been considered in the past did not have the Medicare prescription drug programs go into effect immediately, so that is just a ludicrous charge.

In addition, I will remind my colleagues that both the Democratic plans under consideration in the summer of 2002 didn’t go into effect until 2005 because they recognized the same thing we did—that it will take some time to get a new program like this up and running.

And so, there’s no subterfuge behind the 2006 date in the MMA. Moreover, at least the MMA offers immediate assistance through the drug card program. Their plans offered nothing until 2005 and then very little after that!

I would also like to respond to my colleague from California’s comments about the Veterans Administration system and the deficiencies of which I described this yesterday morning. If she’s surprised at the Republicans for not using the VA model, then my only guess is that she’s even more surprised that her own party didn’t.

No—they wanted to have private plans negotiate with drug companies—the same approach taken in the MMA. The VA system was not a model for any Medicare prescription drug plans considered on the Senate floor.

Finally, let me address the idea of importing cheap drugs from Canada.

First, nobody has a greater desire than I to make prescription drugs more affordable, particularly for our seniors and the disabled, who depend so heavily upon pharmaceuticals for their quality of life. I co-authored the 1984 bill which, in essence, brought generic drugs to the marketplace to become the force for competition and affordability that they are today.

My colleagues seem to forget that the MMA does include a provision to permit the importation of prescription drugs from Canada once a program is in place that is approved and certified for safety and cost by the Secretary of the Department of Health and Human Services (HHS). The law also calls for the Secretary to establish a 13-member task force that will study proposals to make re-importation safe and cost effective.

HHS Secretary Tommy Thompson has stated he is hopeful the panel's study will be completed by the end of this year. We shouldn't overlook the fact that the FDA has documented many cases of what appeared to be FDA-approved imported drugs that in fact were contaminated or counterfeit, contained the wrong product or incorrect dose, were accompanied by inadequate directions, or had outlived their expiration date.

These drugs would be at a minimum ineffective, and could actually be harmful or fatal.

The FDA is also concerned with the safety of allowing companies which are not licensed by states to practice pharmacy to sell prescription drugs without any limitation on the amount or frequency of drug imports permitted for individuals.

In addition, reimportation legislation as it is written would allow risky drugs that are currently available in the U.S. only under strict safety controls to be reimported at any amount or frequency to anyone—even those who are at high risk to be seriously injured by the medication.

The FDA underscored these concerns in the Judiciary Committee's hearing on drug importation last July. The agency stressed that opening our tightly regulated, closed system of prescription drug distribution will open the door to counterfeit and otherwise adulterated or misbranded drugs being widely distributed to an unwitting American public.

Mr. William K. Hubbard, the Associate Commissioner for Policy and Planning for the FDA testified before the Senate Judiciary Committee on this important matter. I would like to take this opportunity to read some of his testimony to my colleagues:

FDA remains concerned about the public health implications of unapproved prescrip-

tion drugs from entities seeking to profit by getting around U.S. legal standards for drug safety and effectiveness. Many drugs obtained from foreign sources that either purport to be or appear to be the same as U.S. approved prescription drugs are, in fact, of unknown quality. Consumers are exposed to a number of potential risks when they purchase drugs from foreign sources or from sources that are not operated by pharmacies properly licensed under state pharmacy laws.

Patients also are at greater risk because there is no certainty about what they are getting when they purchase some of these drugs. Although some purchasers of drugs from foreign sources may receive genuine product, others may unknowingly buy counterfeit copies that contain only inert ingredients, legitimate drugs that are outdated and have been diverted to unscrupulous resellers, or dangerous sub-potent or super-potent products that were improperly manufactured. Furthermore, in the case of foreign-based sources, if a consumer has an adverse drug reaction or any other problem, the consumer may have little or no recourse either because the operator of the pharmacy often is not known, or the physical location of the seller is unknown or beyond the consumer's reach. FDA has only limited ability to take action against these foreign operators.

These safety concerns are real, and I strongly believe that if we truly care about seniors and other patients who depend upon prescription drugs, we should not expose them to what currently amounts to pharmaceutical Russian roulette.

Now the FDA is working with some of my colleagues on legislation that would give the FDA greater resources, limit the scope of imports, and provide greater power to the FDA to police imports. In recent public comments, former Commissioner Mark McClellan has said these measures would give the agency the ability to assure the safety of prescription drugs imported by Canada.

In addition to these safety concerns, however, I am also concerned that re-imported drugs pose a threat to the innovation Americans—and the rest of the world—have come to expect from our pharmaceutical industry. Canada and other countries with lower drug prices generally import superior American products, but impose price controls to keep costs down.

However, it can cost as much as \$1 billion to produce a new drug, test it, win FDA approval, educate doctors, and make the drug available to patients. No pharmaceutical company could go through this immensely expensive process without a chance to recover some of its costs, which will not be possible if we impose in America—however indirectly—Canadian-style price controls. I do not believe that sacrificing the safety and future supply of our drugs by reimportation is the right answer to the high cost of prescription drugs.

I hope that I have cleared up any misunderstandings that Medicare beneficiaries have about the MMA law. Again, we gain nothing by spreading mistruths about the Medicare bill.

The only thing that results from those types of charges is confusion of

Medicare beneficiaries—the very people who all of us are trying to help. And that is regrettable.

ANTISEMITISM

Mr. SMITH. Mr. President, I speak about antisemitism, an ancient pestilence that has torn at the fabric of society for too long. Specifically, I have become concerned with the dissemination of antisemitic attitudes through political cartoons.

Last month, on the eve of Rosh Hashanah, I stood in this chamber along with a bipartisan group of my colleagues to speak about the cancerous effect that antisemitism continues to have on humanity. As I stated then, it is of the highest priority for our Nation to stand up against this venomous invective and bigotry directed at the Jewish people.

It is an unfortunate reality that some newspapers in the Arab world blatantly promote antisemitism. For my remarks, I had prepared several posters of cartoons that appeared in Arabic-language newspapers to illustrate to my colleagues their insidious nature, but in the end, I found them too unsettling to display.

What I find disconcerting, however, is the fact that this sentiment is creeping into political cartoons both in Europe as well as here in the United States. Newspapers across the country and the world have published cartoons that have gone beyond reasonable differences of opinion and expanded into the realm of antisemitism.

For example, I have seen a cartoon of a man lying on the ground, bleeding and clutching a small Palestinian flag. Impaled in his back is a large American flag with its stars arranged to form the Star of David. This graphic image, insinuating that an Israeli-controlled America has killed the state of Palestine, is appalling.

In Italy, the Newspaper La Stampa ran a cartoon depicting an Israeli tank rumbling toward a baby Jesus, who is crying "Surely they don't want to kill me again?!" This is not a criticism of policy or leadership. This is nothing other than an antisemitic attack thinly veiled as political parody.

In the Greek Newspaper Ethnos, a cartoon appeared showing two Israeli soldiers stabbing captive Arabs. One of the Israeli soldiers is depicted as saying to the other "Don't feel guilty, brother. We were not in Auschwitz and Dachau to suffer but to learn!" How can that be construed as anything other than bigotry? This kind of hatred is simply unacceptable, and I urge my colleagues in the Senate, as well as leaders across the world, to make every effort to end this terrible plague of hatred.

RELATIONS WITH KYRGYZSTAN

Ms. LANDRIEU. Mr. President, I make special note of the visit to the United States by the distinguished