

Expanding comprehensive motorcycle rider education and skill testing in all States for novice riders; and

Reducing drinking and driving by motorcyclists through alcohol awareness messages and targeted enforcement.

As part of this effort, a workshop is being planned for June 2004 to identify strategies that can be used to reduce motorcycle fatalities and injuries. You and/or your constituents are welcome to participate in, and contribute to, this workshop. The result of this research project will be the development of a guide for highway officials on practices than can improve safety for motorcyclists throughout the transportation system.

Also as part of the implementation of our Strategic Highway Safety Plan, ASSHTO has committed to the creation of a joint task force to identify hazards/areas of concern to motorcyclists, as well as highway practices that can help minimize these concerns. Examples include the longitudinal expansion joints on bridges, the slickness of material used to fill asphalt pavement cracks, and the safety of various types of guardrail including traditional steel W-beam guardrail and the newer cable barriers. This joint task force will consist of members from the State transportation departments, the American Motorcyclist Association, the Motorcycle Riders Foundation, the National Highway Traffic Safety Administration, and the Federal Highway Administration. Additional input may also be sought from other noted experts in the areas of motorcycle and highway safety both here and abroad. The information developed by this special committee will be used as input into the revision and update of the various AASHTO manuals and guides.

We are very pleased that you have an interest in this area and we are committed to working with you over the next year to ensure that these issues are addressed and that the resulting recommendations are successfully implemented. Please contact my office at (202) 624-5800 if you have any questions regarding this information.

Sincerely,

JOHN C. HORSLEY,
Executive Director.

Mr. INHOFE. I understand that the Senator has also proposed creating a new program to encourage improvements in the States' motorcycle safety programs. I believe this amendment would be very valuable. I also believe it would be most appropriate offered as part of the Commerce Committee title, and would like to be added as an original cosponsor of the amendment when that happens.

Ms. MURKOWSKI. I thank the Chairman for his assistance and will add him as an original cosponsor when that amendment is offered.

The PRESIDING OFFICER. Who seeks recognition?

Mr. INHOFE. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. FRIST. I ask unanimous consent that the order for the quorum call be rescinded.

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

CLOTURE MOTION

Mr. FRIST. Mr. President, I now send a cloture motion on the bill to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair lays before the Senate the cloture motion, which the clerk will state.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Calendar No. 426, S. 1072, a bill to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes.

Bill Frist, James Inhofe, Christopher Bond, Gordon Smith, Lamar Alexander, Richard Lugar, Lincoln Chafee, Elizabeth Dole, George Allen, Pat Roberts, Robert Bennett, Craig Thomas, Richard Shelby, Norm Coleman, Mike Crapo, Mike Enzi, Jim Bunning.

MORNING BUSINESS

Mr. FRIST. I now ask unanimous consent that there be a period for morning business with Senators to speak for up to 5 minutes each.

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

HONORING OUR ARMED FORCES

SECOND LIEUTENANT LUKE S. JAMES

Mr. INHOFE. Mr. President, I rise today to honor the memory of a brave young American who gave his life defending our Nation. I went to the ceremony out at Arlington this morning for this young man. It was one of the most moving experiences I have ever had. This man felt a call to serve his country, to be a part of something bigger than himself. For that call, he paid the highest price.

2LT Luke James of Hooker, OK, was a platoon leader in the 82nd Airborne's B Company, 2nd Battalion, 505th Parachute Infantry Regiment, stationed at Fort Bragg, NC. He is survived by his wife Molly and their little son Bradley who was born just 6 months ago. His parents Brad and Arleen James live in Hooker, OK, where Luke played football at Hooker High School and graduated near the top of his class. Luke later attended and graduated from Oklahoma State University where he participated in the ROTC program and earned a degree in animal science.

While on a dismounted patrol, Luke was killed by a roadside bomb during an ambush on January 27. He gave his life for the freedom of millions of Americans and for the peace and future of the Iraqi people.

Lieutenant James had long imagined a life of service in the Army. He was going to be career. These aspirations were realized culminating with his commissioning into the airborne infantry on December of 2002. His parents have described how Luke embodied the selfless attitude toward service to country that is so evident in all of our military men and women.

On February 10, I had the opportunity to attend Lieutenant James' fu-

neral at Arlington National Cemetery. The ceremony honored Luke, and deservedly so. In the words of Lieutenant James' mother, speaking of her son, she said:

We are very proud as his parents that he had the attitude he had, and wanted to serve. . . . It wouldn't have been this mother's choice, but you have to have young men and women willing to preserve the freedom we have. We are glad he was willing.

He was willing. We as a nation are grateful. The loss of 2LT Luke S. James is grievous to all of us. Our thoughts are with his wife and son, as well as his family in Oklahoma.

Today we recognize his valor and commitment. It is for men like Luke James I am proud to be a part of this great Nation. He was a special soldier, a real Oklahoman, and a true American.

As we tour over there, and see these young warriors and their attitude and commitment and patriotism, it is so heartwarming. I am sure at one time or another I saw Luke, but I don't remember when that was. But he is certainly typical, and his family, recognizing that he made the supreme sacrifice, but he made it for us. He knew that risk was there when he took on the position he held.

THE CASE OF MAHER ARAR

Mr. LEAHY. Mr. President, I rise to speak about a very troubling case of rendition and alleged torture that became public last fall. This is the case of Maher Arar, a Canadian and Syrian citizen, who was deported from the United States to Syria last year, who was held and interrogated for months by the Syrians at the Bush administration's request, and who claims to have suffered torture while in custody there.

Mr. Arar was stopped by immigration officers at John F. Kennedy International Airport in September 2002 as he attempted to change planes on his way home to Canada from Tunisia. He claims that he was interrogated by an FBI agent and a New York City police officer, and that he was denied access to a lawyer. He further claims that he repeatedly told U.S. officials that he feared he would be tortured if deported to Syria. After being held for nearly two weeks in a federal detention center in New York, Mr. Arar was transferred by U.S. authorities to Syria. Arar claims that he was physically tortured during the first two weeks of his detention in Syria, and that he was subjected to severe psychological abuse over the following ten months, including being held in a grave-like cell and being forced to undergo interrogation while hearing the screams of other prisoners.

Syria has a well-documented history of state-sponsored torture. In fact, President Bush stated on November 7, 2003, that Syria has left "a legacy of torture, oppression, misery, and ruin" to its people. Stories like Mr. Arar's are appalling and, if true, seriously

damage our credibility as a responsible member of the international community.

When unrelated allegations of rendition and possible breaches of the Convention Against Torture ("Torture Convention") surfaced in the summer of 2003, I wrote to administration officials asking for guarantees that the United States is complying with its obligations under this Convention. I received a response from the General Counsel of the Department of Defense, William J. Haynes. His letter contained a welcome commitment by the administration that it is the policy of the United States to comply with all of its legal obligations under the Torture Convention. I wrote to Mr. Haynes again for clarification on a number of points, such as how the administration reconciled this statement of policy with reported acts of rendition and accusations of the use of interrogation techniques rising to or near the level of torture. After 2 months with no response, another letter, this one not from Haynes himself but from a subordinate, was delivered late at night on the eve of Mr. Haynes' November 19, 2003 confirmation hearing for a seat on the Fourth Circuit Court of Appeals. That letter was totally unresponsive to my questions.

Because Mr. Arar claims that he was interrogated by an FBI agent, I wrote to FBI Director Mueller on November 17, 2003 for more information on the case. Later that week, when press accounts indicated that the deportation of Mr. Arar was approved by the Department of Justice ("DOJ"), I wrote to Attorney General Ashcroft to ask a number of additional questions. Neither of these letters has been answered.

Administration officials claim that the CIA received assurances from Syria that it would not torture Mr. Arar, and yet, spokesmen for DOJ have not explained why they believed the Syrian assurances to be credible. Nor have they explained inconsistencies in statements coming from officials at different agencies. Although the administration has officially welcomed statements by the Syrian government that Mr. Arar was not tortured, other unnamed officials have been quoted in the press as saying that, while in captivity in Syria, Mr. Arar confessed under torture that he had gone to Afghanistan for terrorist training. I have asked DOJ to address that shocking contradiction and also to explain whether the United States has investigated Syria's alleged non-compliance with any assurances it provided to the U.S. government.

Whether or not Mr. Arar had ties to terrorist organizations, as is alleged by U.S. officials, or whether his confession was a false one produced by coercion, as he claims, he was subject to the legal protections provided by the Torture Convention, which the United States has ratified.

Recently, the Canadian government announced a full inquiry into the de-

portation of Mr. Arar to Syria and his alleged torture there. This inquiry will also examine the role played by Canadian officials in the case to determine whether the Canadian government was complicit in the rendition of Mr. Arar. And just weeks ago, a non-profit organization, the Center for Constitutional Rights, filed a constitutional and human rights case on behalf of Mr. Arar with the U.S. District Court for the Eastern District of New York challenging the decision by federal officials to deport him to Syria. As the Washington Post editorialized on February 2, 2004, "The government should be obliged to spell out how this decision came to be made and why."

I urge my colleagues to follow this Federal court case the Canadian inquiry closely. If the allegations by Mr. Arar are true, then our government has much to answer for. The case has already damaged our standing with foreign governments, many of which we have criticized in the past for relying on torture in interrogations. If the U.S. is "subcontracting" interrogation of terrorism suspects to nations that bend the rules on torture, it undermines our reputation as a Nation of laws, it hurts our credibility in seeking to uphold human rights, and it invites others to use the same tactics.

I ask unanimous consent to print the letters I mentioned and the Washington Post editorial in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post, February 2, 2004]

MR. ARAR'S LAWSUIT

The Federal lawsuit filed last week by Maher Arar—the Syrian-born Canadian whom the federal government deported to Syria—offers a good opportunity to shed some light on one of the more peculiar civil liberties cases to arise during the war on terrorism. Mr. Arar and the U.S. government agree on the barest outlines of his story: He was flying home from Tunisia to Canada in the fall of 2002 on a path that took him through New York. He had, however, been placed on the terrorist watch list. When he presented his Canadian passport, he was detained for more than a week and—despite his pleas to be sent to Canada—was sent to Syria. There he was held for 10 months until intervention by the Canadian government secured his release.

That is where agreement ends. Mr. Arar denies any connection to al Qaeda. He claims to have been savagely tortured in his country of birth. And he alleges that he was sent to Syria, rather than to Canada, precisely so that he would be tortured—to be precise, "so that Syrian authorities would interrogate him in ways that [American officials] believed themselves unable to do directly." All of which, if true, would violate this country's international treaty obligations, which prohibit turning someone over to a government likely to mistreat that person. In Canada, Mr. Arar's case has become a cause, cited as an example of American arrogance and contempt for Canada's interests and citizens.

The American government firmly—if vaguely—denies any wrongdoing. It still claims that its information on Mr. Arar was solid, though it refuses to release any of

what it terms "sensitive national security information." Mr. Arar is a member of al Qaeda, the Justice Department alleged in a recent statement. Anonymous officials have been quoted in press accounts saying that he was carrying a list of al Qaeda operatives and that then-Deputy Attorney General Larry D. Thompson signed an order certifying that returning Mr. Arar to Canada would be "prejudicial to the interests of the United States." The department says that Mr. Arar's deportation to Syria was "fully within the law and applicable international treaties and conventions." Far from intending that Syria would torture him, in fact, the department claims that it was "provided with reliable assurances that Mr. Arar would be treated humanely."

There are two questions that we hope this litigation would shed light upon. The first is whether Mr. Arar was, in fact, a would-be-terrorist. The second is why he was sent to a country known for abusing human rights, instead of being sent to Canada or detained here as an enemy combatant. What was the goal, if not to delegate to the Syrians torture that American authorities cannot engage in? At the least, the government should be obliged to spell out how this decision came to be made and why.

U.S. SENATE,

Washington, DC, June 2, 2003.

Hon. CONDOLEEZZA RICE,
National Security Adviser, The White House,
Washington, DC.

DEAR DR. RICE: Over the past several months, unnamed Administration officials have suggested in several press accounts that detainees held by the United States in the war on terrorism have been subjected to "stress and duress" interrogation techniques, including beatings, lengthy sleep and food deprivation, and being shackled in painful positions for extended periods of time. Our understanding is that these statements pertain in particular to interrogations conducted by the Central Intelligence Agency in Afghanistan and other locations outside the United States. Officials have also stated that detainees have been transferred for interrogation to governments that routinely torture prisoners.

These assertions have been reported extensively in the international media in ways that could undermine the credibility of American efforts to combat torture and promote the rule of law, particularly in the Islamic world.

I appreciate President Bush's statement, during his recent meeting with U.N. High Commissioner for Human Rights Sergio De Mello, that the United States does not, as a matter of policy, practice torture. I also commend the Administration for its willingness to meet with and respond to the concerns of leading human rights organizations about reports of mistreatment of detainees. At the same time, I believe the Administration's response thus far, including in a recent letter to Human Rights Watch from Department of Defense General Counsel William Haynes, while helpful, leaves important questions unanswered.

The Administration understandably does not wish to catalogue the interrogation techniques used by U.S. personnel in fighting international terrorism. But it should affirm with clarity that America upholds in practice the laws that prohibit the specific forms of mistreatment reported in recent months. The need for a clear and thorough response from the Administration is all the greater because reports of mistreatment initially arose not from outside complaints, but from statements made by administration officials themselves.

With that in mind, I would appreciate your answers to the following questions:

First, Mr. Haynes' letter states that when questioning enemy combatants, U.S. personnel are required to follow "applicable laws prohibiting torture." What are those laws? Given that the United States has ratified the Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (CAT), is this Convention one of those laws, and does it bind U.S. personnel both inside and outside the United States?

Second, does the Administration accept that the United States has a specific obligation under the CAT not to engage in cruel, inhuman and degrading treatment?

Third, when the United States ratified the CAT, it entered a reservation regarding its prohibition on cruel, inhuman and degrading treatment, stating that it interprets this term to mean "the cruel, unusual and inhumane treatment or punishment prohibited by the 5th, 8th, and/or 14th amendments to the Constitution." Are all U.S. interrogations of enemy combatants conducted in a manner consistent with this reservation?

Fourth, in its annual Country Reports on Human Rights Practices, the State Department has repeatedly condemned many of the same "stress and duress" interrogation techniques that U.S. personnel are alleged to have used in Afghanistan. Can you confirm that the United States is not employing the specific methods of interrogation that the State Department has condemned in countries such as Egypt, Iran, Eritrea, Libya, Jordan and Burma?

Fifth, the Defense Department acknowledged in March that it was investigating the deaths from blunt force injury of two detainees who were held at a Bagram air base in Afghanistan. What is the status of that investigation and when do you expect it to be completed? Has the Defense Department or the CIA investigated any other allegations of torture or mistreatment of detainees, and if so, with what result? What steps would be taken if any U.S. personnel were found to have engaged in unlawful conduct?

Finally, Mr. Haynes' letter offers a welcome clarification that when detainees are transferred to other countries, "U.S. Government instructions are to seek and obtain appropriate assurances that such enemy combatants are not tortured." How does the administration follow up to determine if these pledges of humane treatment are honored in practice, particularly when the governments in question are known to practice torture?

I believe these questions can be answered without revealing sensitive information or in any way undermining the fight against international terrorism. Defeating terrorism is a national security priority, and no one questions the imperative of subjecting captured terrorists to thorough and aggressive interrogations consistent with the law.

The challenge is to carry on this fight while upholding the values and laws that distinguish us from the enemy we are fighting. As President Bush has said, America is not merely struggling to defeat a terrible evil, but to uphold "the permanent rights and the hopes of mankind." I hope you agree that clarity on this fundamental question of human rights and human dignity is vital to that larger struggle.

Thank you for your assistance.

Sincerely,

PATRICK LEAHY,
U.S. Senator.

GENERAL COUNSEL OF THE
DEPARTMENT OF DEFENSE,
Washington, DC, June 25, 2003.

Hon. PATRICK J. LEAHY,
U.S. Senate,
Washington, DC.

DEAR SENATOR LEAHY: I am writing in response to your June 2, 2003, letter to Dr. Rice

raising a number of legal questions regarding the treatment of detainees held by the United States in the wake of the September 11, 2001, attacks on the United States and in this Nation's war on terrorists of global reach. We appreciate and fully share your concern for ensuring that in the conduct of this war against a ruthless and unprincipled foe, the United States does not compromise its commitment to human rights in accordance with the law.

In response to your specific inquiries, we can assure you that it is the policy of the United States to comply with all of its legal obligations in its treatment of detainees, and in particular with legal obligations prohibiting torture. Its obligations include conducting interrogations in a manner that is consistent with the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment ("CAT") as ratified by the United States in 1994. And it includes compliance with the Federal anti-torture statute, 18 U.S.C. §§ 2340-2340A, which Congress enacted to fulfill U.S. obligations under the CAT. The United States does not permit, tolerate or condone any such torture by its employees under any circumstances.

Under Article 16 of the CAT, the United States also has an obligation to "undertake . . . to prevent other acts of cruel, inhuman, or degrading treatment or punishment which do not amount to torture." As you noted, because the terms in Article 16 are not defined, the United States ratified the CAT with a reservation to this provision. This reservation supplies an important definition for the term "cruel, inhuman, or degrading treatment or punishment." Specifically, this reservation provides that "the United States considers itself bound by the obligation under article 16 to prevent, 'cruel, inhuman or degrading treatment or punishment' only in so far as the term 'cruel, inhuman or degrading treatment or punishment' means the cruel, unusual and inhumane treatment or punishment prohibited by the Fifth, Eighth, and/or Fourteenth Amendments to the Constitution of the United States." United States policy is to treat all detainees and conduct all interrogations, wherever they may occur, in a manner consistent with this commitment.

As your letter stated, it would not be appropriate to catalogue the interrogation techniques used by U.S. personnel in fighting international terrorism, and thus we cannot comment on specific cases or practices. We can assure you, however, that credible allegations of illegal conduct by U.S. personnel will be investigated and, as appropriate, reported to proper authorities. In this connection, the Department of Defense investigation into the deaths at Bagram, Afghanistan, is still in progress. Should any investigation indicate that illegal conduct has occurred, the appropriate authorities would have a duty to take action to ensure that any individuals responsible are held accountable in accordance with the law.

With respect to Article 3 of the CAT, the United States does not "expel, return ('refouler') or extradite" individuals to other countries where the U.S. believes it is "more likely than not" that they will be tortured. Should an individual be transferred to another country to be held on behalf of the United States, or should we otherwise deem it appropriate, United States policy is to obtain specific assurances from the receiving country that it will not torture the individual being transferred to that country. We can assure you that the United States would take steps to investigate credible allegations of torture and take appropriate action if there were reason to believe that those assurances were not being honored.

In closing, I want to express my appreciation for your thoughtful questions. We are

committed to protecting the people of this Nation as well as to upholding its fundamental values under the law.

Sincerely,

WILLIAM J. HAYNES II.

U.S. SENATE,

Washington, DC, September 9, 2003.

WILLIAM J. HAYNES II,
General Counsel, Department of Defense,
Defense Pentagon, Washington, DC.

DEAR MR. HAYNES: Thank you for your June 25, 2003, letter concerning U.S. policy with regard to the treatment of detainees held by the United States.

I very much appreciate your clear statement that it is the policy of the United States to comply with all of its legal obligations under the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT). I also welcome your statement that it is United States policy to treat all detainees and conduct all interrogations, wherever they may occur, in a manner consistent with our government's obligation, under Article 16 of the CAT, "to prevent other acts of cruel, inhuman, or degrading treatment or punishment" as prohibited under the Fifth, Eighth, and Fourteenth Amendments to the U.S. Constitution.

This statement of policy rules out the use of many of the "stress and duress" interrogation techniques that have been alleged in press reports over the last several months, including beatings, lengthy sleep and food deprivation, and shackling detainees in painful positions for extended periods of time. It should also go a long way towards answering concerns that have been expressed by our friends overseas about the treatment of detainees in U.S. custody. It should strengthen our nation's ability to lead by example in the protection of human rights around the world, and our ability to protect Americans, including our service members, should they be detained abroad.

At the same time, the ultimate credibility of this policy will depend on its implementation by U.S. personnel around the world. In that spirit, I would appreciate it if you could clarify how the administration's policy to comply with the CAT is communicated to those personnel directly involved in detention and interrogation? As you note in your letter, the U.S. obligation under Article 16 of the CAT is to "undertake . . . to prevent" cruel, inhuman or degrading treatment or punishment. What is the administration doing to prevent violations? Have any recent directives regulations or general orders been issued to implement the policy your June 25 letter describes? If so, I would appreciate receiving a copy.

I understand that interrogations conducted by the U.S. military are governed at least in part by Field Manual 34-52, which prohibits "the use of force, mental torture, threats, insults, or exposure to unpleasant and inhumane treatment of any kind." This field manual rightly stresses that "the use of force is a poor technique, as it yields unreliable results, may damage subsequent collection efforts, and can induce the source to say whatever he thinks the interrogator wants to hear." Are there further guidelines that in any way add to, define, or limit the prohibitions contained in this field manual? What mechanisms exist for ensuring compliance with these guidelines?

Most important, I hope you can assure me that interrogators working for other agencies, including the CIA, operate from the same guidelines as the Department of Defense. If CIA or other interrogation guidelines in use by any person working for or on behalf of the U.S. government differ, could you clarify how, and why?

I am pleased that before handing over detainees for interrogation to third countries, the United States obtains specific assurances that they will not be tortured. I remain concerned, however, that mere assurances from countries that are known to practice torture systematically are not sufficient. While you state that the United States would follow up on any credible information that such detainees have been mistreated, how would such information emerge if no outsiders have access to these detainees? Has the administration considered seeking assurances that an organization such as the International Committee for the Red Cross have access to detainees after they have been turned over? If not, I urge you to do so.

Finally, has the administration followed up on specific allegations reported in the press that such detainees may have been tortured, including claims regarding a German citizen sent to Syria in 2001, and statements by former CIA official Vincent Cannistrano concerning an al-Qaeda detainee sent from Guantanamo to Egypt (see enclosed articles)?

Thank you again for your response to my last letter.

With best regards,

PATRICK LEAHY,
U.S. Senator.

DEPARTMENT OF DEFENSE,
OFFICE OF GENERAL COUNSEL,
Washington, DC, November 18, 2003.

Hon. PATRICK J. LEAHY,
U.S. Senate,
Washington, DC.

DEAR SENATOR LEAHY: I am responding to your September 9, 2003 letter, which follows up on the June 25, 2003 letter from Mr. Haynes concerning U.S. policy on the treatment of detainees held by the United States in the war on terrorism. The earlier letter to you and an April 2, 2003 letter to the Executive Director of Human Rights Watch (enclosed) contain precise statements of U.S. policy. As statements of U.S. policy, they reflect the policy applicable to the Executive Branch.

Your letter inquired about Department of Defense (DoD) implementation of the policy described in the June 25 letter. The Department takes its compliance with U.S. obligations very seriously. For that reason, the Department has a Law of War Program, which is governed by DoD directive 5100.77 (December 9, 1998), a copy of which is enclosed. That Directive, among other things, provides that it is DoD policy to ensure that DoD components observe the law of war obligations of the United States, and that those components implement an effective program to prevent violations of the law of war. Through the Law of War Program, the Department seeks to prevent law of war violations through training and by instructing DoD personnel about U.S. obligations, and ensuring that qualified legal advisers are available at all levels of command to provide advice on compliance with the law of war.

Moreover, DoD personnel are instructed to report allegations of mistreatment of or injuries to detained enemy combatants through normal command channels for ultimate transmission to appropriate authorities. Individual military personnel bear a responsibility to ensure their compliance. Commanding officers carry the additional responsibility to be aware of and to direct the conduct of the men and women under their command in order to, among other things, ensure their compliance with U.S. obligations in matters such as the treatment of those detained in an armed conflict. Although our principal institutional focus is, as it should be, on compliance with the law of war and avoiding and preventing viola-

tions of it, DoD also has an effective military criminal justice system for detecting, investigating, prosecuting, and punishing misconduct by military personnel should it occur.

Your letter also asked whether follow-up had occurred regarding allegations appearing in stories in the Washington Post on January 31, 2003, in Newsday on February 6, 2003, and in the Los Angeles Times on March 3, 2003. With respect to the first story, it does not allege unlawful activity by any U.S. official because participation in questioning abroad and knowledge of transfers to third countries, without more, do not contravene the law. With respect to the second story, the allegations of improper treatment it contains are by an individual who has not been a Central Intelligence Agency employee since well before 2001. With respect to the final story, the unnamed sources are quoted as saying that they did not know details, but they nevertheless then speculated about what was happening. To the extent that it might be possible to construe the latter two stories as containing allegations about the treatment of individuals while outside military control, I understand that the Office of the Director of Central Intelligence (DCI) has copies of these articles and is responsible for appropriate action.

Please allow me to emphasize that press stories often contain allegations that are untrue, and that my mention of the office of the DCI indicates nothing concerning the merits of those allegations and it does not express a view concerning what action might be appropriate.

I appreciate very much the opportunity to address your concerns. The Administration is committed to carrying out the law as we continue our dedicated efforts to protect Americans from terrorism.

Sincerely,

DANIEL J. DELL'ORTO,
Principal Deputy General Counsel.

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, November 17, 2003.

Hon. ROBERT S. MUELLER,
Director, Federal Bureau of Investigation,
Washington, DC.

DEAR DIRECTOR MUELLER: I am writing to inquire about the role the FBI may have played in the extraordinary rendition of Maher Arar, a Canadian and Syrian citizen, from the United States to Syria last year.

Press reports indicate that Mr. Arar was stopped by immigration officers at John F. Kennedy International Airport as he attempted to change planes on his way home to Canada from Tunisia. Mr. Arar claims that he was then interrogated by an FBI agent and a New York City police officer. He further claims that, "They told me I had no right to a lawyer because I was not an American citizen," and that he repeatedly told U.S. officials that he feared he would be tortured if returned to Syria. "Deported Terror Suspect Details Torture in Syria," Washington Post, November 5, 2003. After being held for nearly two weeks in a federal detention center, Mr. Arar alleges that he was then handed over to U.S. intelligence officials who flew him to Jordan and turned him over to Jordanian authorities, who beat him. He was then taken to Syria, where he was detained and allegedly tortured over a period of ten months.

While the Bush administration officially denies engaging in extraordinary renditions of this sort, numerous unnamed intelligence officials have admitted to the press that renditions have occurred, purportedly under a "secret rendition policy." Id. This policy was described as "a secret presidential 'finding' authorizing the CIA to place suspects in foreign hands without due process." Id.

I find Mr. Arar's claims and the underlying rendition policy deeply troubling and would like information on the role of the FBI, if any, in this case.

1. Under what specific authority was Mr. Arar detained, first at the airport and then at the federal detention center in Brooklyn?

2. Is it true that one or more FBI agents interrogated Mr. Arar after he was detained by immigration officers at JFK airport?

3. If so, is it true that Mr. Arar was denied access to counsel?

4. Did the FBI participate in any manner in the transfer of Mr. Arar to Washington, D.C., Jordan, Syria, or to any other location?

5. An intelligence official is quoted in the Washington Post story as saying, "The Justice Department did not have enough evidence to detain him when he landed in the United States." If this is true and if, as has also been reported in the press, U.S. officials were in contact with Canadian authorities, why did the FBI and/or other officials choose not to turn Arar over to Canadian authorities?

6. In a June 25, 2003, letter to me on the subject of rendition and other matters, the U.S. Defense Department General Counsel, William Haynes, stated that the "United States policy is to obtain specific assurances from the receiving country that it will not torture the individual being transferred to that country." Did the United States seek assurances from Jordan and/or Syria that Mr. Arar would not be subject to torture, or to cruel, or inhuman, or degrading treatment or punishment while in the custody of either nation? If so, what steps did the United States take after his rendition to assess compliance with such assurances in this case? Were the assurances provided in writing? If so, please provide a copy to the Committee. If such a document is classified, please arrange for cleared staff to view it. If no assurances were obtained, please explain why not.

7. Under U.S. law, non-citizens who express concerns about torture if removed are entitled to an evaluation of their claim before being removed. Under the specific regulations that were likely applied to Mr. Arar's removal, there is an explicit prohibition against returning someone to a country where there are substantial grounds for believing he would be subjected to torture. What process was used, if any, to evaluate the likelihood that Mr. Arar would be subjected to torture before removing him to Syria?

8. Are you aware of a "secret presidential 'finding' authorizing the CIA to place suspects in foreign hands without due process"? If so, please provide a copy to the Committee. If such a document is classified, please arrange for cleared staff to view it.

9. Has the FBI participated in any other alleged renditions, including interviewing and then handing suspects over to intelligence officers for transfer to another country?

Thank you for your prompt answers to these questions.

Sincerely,

PATRICK LEAHY,
U.S. Senator.

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, November 21, 2003.

Hon. JOHN ASHCROFT,
Attorney General, Department of Justice,
Washington, DC.

DEAR ATTORNEY GENERAL ASHCROFT: I am writing to inquire about the rendition of Maher Arar, a Canadian and Syrian citizen, from the United States to Syria last year.

I wrote to FBI Director Robert Mueller about this case on Monday, November 17. (See attached). Since that time, additional

information on this case has been provided to the press, mainly in statements by unnamed administration officials, but also by Department of Justice (DOJ) spokespersons.

Washington Post articles indicate that the deportation of Mr. Arar was approved on October 7, 2002, by then-Deputy Attorney General Larry Thompson, who signed the order in his capacity as Acting Attorney General. "Man Was Deported After Syrian Assurances," Washington Post, November 20, 2003 [hereinafter Washington Post, Nov. 20, 2003]; "Top Justice Aide Approved Sending Suspect to Syria," Washington Post, November 19, 2003. The same story states that U.S. officials "decided to send [Arar] to Syria last year only after the CIA received assurances from Syria that it would not torture the man." Washington Post, Nov. 20, 2003. And yet, "spokesmen at the Department of Justice declined to comment on why they believed the Syrian assurances to be credible." *Id.*

Mr. Arar claims that he was, in fact, tortured while in Syrian custody. The Syrian government has denied that Arar was subjected to torture, but statements from U.S. officials contradict that assertion. In a November 15 New York Times article, "American officials who spoke on condition of anonymity," were quoted as saying that Arar "confessed under torture in Syria that he had gone to Afghanistan for terrorist training, named his instructors and gave other intimate details." "Qaeda Pawn, U.S. Calls Him Victim, He Calls Himself," New York Times, November 15, 2003 (emphasis added). I find this statement to be shocking in light of the administration's assertions that it acted within the scope of its international treaty obligations.

Mr. Arar claims to have stated repeatedly to his U.S. interrogators that he feared torture at the hands of the Syrian government. Whether or not Mr. Arar had ties to terrorist organizations, as is alleged by U.S. officials, or whether his confession was a false one produced by coercion, as he claims, he was subject to the legal protections provided by the Convention Against Torture, which the United States has ratified.

The statements by Mr. Arar and the unnamed sources in the New York Times article cited above beg the question of whether the United States has investigated Syria's alleged non-compliance with any assurances it provided to the U.S. government. This question is especially critical in light of President Bush's statement on November 7, 2003, that Syria has left "a legacy of torture, oppression, misery, and ruin" to its people.

In light of the above facts and assertions, I request that you provide detailed answers to the following questions:

1. Under what specific authority was Mr. Arar detained, first at John F. Kennedy Airport and then at the federal detention center in Brooklyn, New York?

2. Is it true that Mr. Arar was denied access to counsel, as he claims?

3. An intelligence official is quoted in a November 5 Washington Post story as saying, "The Justice Department did not have enough evidence to detain him when he landed in the United States." "Deported Terror Suspect Details Torture in Syria," Washington Post, November 5, 2003. It has also been reported that U.S. officials were in contact with Canadian authorities regarding this case. Given that Mr. Arar, a Canadian citizen, resides in Canada and was traveling home to Canada when he was detained at the airport, why did the officials choose not to turn Arar over to Canadian authorities?

4. Did you become aware of Mr. Arar's case at any point between his detention on September 26, 2002, and October 7, 2002, the date

the deportation order was signed by Mr. Thompson? Did Mr. Thompson, who was serving as Acting Attorney General when he signed the order, consult with you before signing the order? Did you approve this action?

5. In a June 25, 2003, letter to me on the subject of rendition and other matters, the U.S. Defense Department General Counsel, William Haynes, stated that the "United States policy is to obtain specific assurances from the receiving country that it will not torture the individual being transferred to that country." The November 20 Washington Post article cited above confirms that assurances were obtained from Syria. What was the scope of such assurances? Were they provided to the U.S. government in writing? If so, please provide a copy to the Committee. If such a document is classified, please arrange for cleared staff to view it. If the assurances were not provided in writing, please explain why written assurances were not sought or provided.

6. What steps did the United States after Arar's rendition to assess compliance with the assurances provided by Syria in this case?

7. Is the statement of an unnamed official above that Arar "confessed under torture" accurate? If so, then Syria's actions violated the assurances provided to the U.S. before Arar's rendition. What has the U.S. done (a) to investigate such non-compliance and (b) to hold Syria accountable for such violations?

8. Under U.S. law, non-citizens who express concerns about torture if removed are entitled to an evaluation of their claim before being removed. Under the specific regulations that were likely applied to Mr. Arar's removal, there is an explicit prohibition against returning someone to a country where there are substantial grounds for believing he would be subject to torture. What process was used, if any, to evaluate the likelihood that Mr. Arar would be subjected to torture before removing him to Syria?

9. According to the November 5 Washington Post article cited in question 3, numerous unnamed intelligence officials have admitted to the press that renditions have occurred, purportedly under a "secret rendition policy." This policy was described as "a secret presidential 'finding' authorizing the CIA to place suspects in foreign hands without due process." Are you aware of a "secret presidential 'finding' authorizing the CIA to place suspects in foreign hands without due process"? If so, please provide a copy to the Committee. If such a document is classified, please arrange for cleared staff to view it.

10. Has the FBI or DOJ authorized or participated in any other alleged renditions, including interviewing and then handing suspects over to intelligence officers for transfer to another country?

11. In its effort to fight terrorism, the administration has focused on individuals who have connections to Al Qaeda that need to be further explored, and has argued that it has the right to detain and interrogate prisoners in Guantanamo Bay, perhaps as unlawful combatants or enemy combatants, as long "as it is necessary to help win the war against the Al Qaeda network and its allies." Washington Post, "High Court Will Hear Appeals From Guantanamo Prisoners," November 11, 2003. Notwithstanding my concerns about the legal status of those detained at Guantanamo, and the administration's treatment of enemy combatants in general, it would seem that Mr. Arar fit the classic administration profile for someone who should be detained in Guantanamo. Presumably, Mr. Arar would have been safer in detention at Guantanamo Bay than in Syria.

a. Was the option to detain Arar as an enemy combatant in Guantanamo Bay considered and rejected in favor of rendition to Syria? If so, on what basis was the decision made to send him to Syria?

b. Where there is more than one destination country to which detainees may be rendered, do you believe there should be a policy to render detainees to the country where torture is least likely (e.g., a country that does not have a history of documented humanitarian abuses)?

c. What is the standard applied by the administration in determining whether to deport an individual, transfer the individual to custody at Guantanamo Bay, or to charge the individual with a crime?

Thank you for your prompt answers to these questions.

Sincerely,

PATRICK LEAHY,
U.S. Senator.

LOCAL LAW ENFORCEMENT ACT OF 2003

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. On May 1, 2003, Senator KENNEDY and I introduced the Local Law Enforcement Enhancement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

One such crime occurred in Passaic, NJ, in August, 1999. Kareem Washington, a gay man who sometimes dressed in women's clothing, was stabbed multiple times and left to die in an industrial area in Passaic. Police were unsure of the motive for the murder, however, the victim's wallet was found on his body. The victim was wearing a skirt, high-heeled shoes and stockings at the time he was killed.

I believe that Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

TRIBUTE TO GOVERNOR LOUIE B. NUNN

Mr. BUNNING. Mr. President, I would like to take a moment today to remember Gov. Louie B. Nunn of Versailles, KY, who passed away Thursday, February 5, 2004. Louie was elected Governor of Kentucky in 1967 and was a pillar of strength in the Republican Party for half a century.

Looking back through the history of the Commonwealth, I can say that he was truly the education Governor. Louie was a champion of the education system in Kentucky. He raised the standards of education for all, but focused his efforts on those people who too often fell through the cracks in the system.

He also was an advocate for mental health issues. People used to put anyone with a mental health problem in a shoebox and write them off, but Louie