S. HRG. 108–135, PT. 5

[ERRATA]
CONFIRMATION HEARINGS ON FEDERAL APPOINTMENTS

HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

OCTOBER 15, NOVEMBER 12, AND NOVEMBER 19, 2003

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[ERRATA]

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QUESTIONS AND ANSWERS

Responses of Judith C. Herrera to the Written Follow-up Questions of Senator Richard J. Durbin

You may be aware from press accounts that the Senate Sergeant at Arms is currently conducting an investigation of the Senate Committee on the Judiciary and the wide-scale incidents of theft of memorandums and other work products drafted by Democratic staff members of the Committee. It has been reported in the press and confirmed by the Sergeant-At-Arms that thousands of staff documents were stolen by Republican staff, and that the illegal activities took place over the past several months and perhaps years.

Additionally, at least one of the alleged perpetrators, a former Republican staff member on the Judiciary Committee, has publicly admitted that many of the documents he stole and/or read related to judicial nominations. The former staff member was one of many Republican staff members who worked on judicial nominations matters for Committee Chairman Hatch and subsequently for Majority Leader Frist.

Because of your current status before the Judiciary Committee, I would like to ask you a series of questions concerning these unfortunate criminal incidents.

1. In preparation for your confirmation hearing before the Senate Judiciary Committee, did you meet with any staff of the Senate Judiciary Committee? If so, during those meetings, did any staff of the Senate Judiciary Committee share, reference, or provide you with information that you were led to believe were obtained or derived from Democratic sources? Did any staff of the Senate Judiciary Committee provide you any documents or excerpts from documents that appeared to you to have been drafted or prepared by Democratic staff? If so, please explain the circumstances and what action, if any, you took in response to being presented with such information or documents.

   Response: No, I did not meet with any staff of the Senate Judiciary Committee. I did not receive any documents or excerpts from documents that appeared to have been drafted or prepared by Democratic staff of the Senate Judiciary Committee.

2. In preparation for your confirmation hearing before the Senate Judiciary Committee, did you meet with any staff of the U.S. Department of Justice? If so, during those meetings, did any staff of the Justice Department share, reference, or provide you with information that you were led to believe were obtained or derived from Democratic sources? Did any staff of the Justice Department provide you any documents or excerpts from documents that appeared to you to have been drafted or prepared by Democratic staff? If so, please explain the circumstances and what action, if any, you took in response to being presented with such information or documents.

Response: Yes, I met with staff of the U.S. Department of Justice. I was not provided with any information whatsoever that I believed, or was led to believe, came from Democratic sources.

3. In preparation for your confirmation hearing before the Senate Judiciary Committee, did you meet with any staff of the White House? If so, during those meetings, did any staff of the White House share, reference, or provide you with information that you were led to believe were obtained or derived from Democratic sources? Did any staff of the White House provide you any documents or excerpts from documents that appeared to you to have been drafted or prepared by Democratic staff? If so, please explain the circumstances and what action, if any, you took in response to being presented with such information or documents.

Response: Yes, I met with staff of the White House. I was not provided with any information whatsoever that I believed, or was led to believe, came from Democratic sources.

4. In preparation for your confirmation hearing before the Senate Judiciary Committee, did you meet with anyone associated with individuals, groups, or organizations outside of government that support, endorse, or advocate in any way on behalf of the confirmation of President Bush's judicial nominees? If so, during those meetings, did any of these individuals, groups, or organizations share, reference, or provide you with information that you were led to believe were obtained or derived from Democratic sources? Did any of these individuals, groups, or organizations provide you any documents or excerpts from documents that appeared to you to have been drafted or prepared by Democratic staff? If so, please explain the circumstances and what action, if any, you took in response to being presented with such information or documents.

Response: No, I did not meet with any such individuals, groups or organizations. I did not receive from any such individuals, groups or organizations any information whatsoever that I believed, or was led to believe, came from Democratic sources.

Responses of Judicial Nominee F. Dennis Saylor to the Written Follow-up Questions of Senator Richard J. Durbin

You may be aware from press accounts that the Senate Sergeant at Arms is currently conducting an investigation of the Senate Committee on the Judiciary and the wide-scale incidents of theft of memorandums and other work products drafted by Democratic staff members of the Committee. It has been reported in the press and confirmed by the Sergeant-At-Arms that thousands of staff documents were stolen by Republican staff, and that the illegal activities took place over the past several months and perhaps years.

Additionally, at least one of the alleged perpetrators, a former Republican staff member on the Judiciary Committee, has publicly admitted that many of the documents he stole and/or read related to judicial nominations. The former staff member was one of many Republican staff members who worked on judicial nominations matters for Committee Chairman Hatch and subsequently for Majority Leader Frist.

Because of your current status before the Judiciary Committee, I would like to ask you a series of questions concerning these unfortunate criminal incidents.

Responses are set forth in bold.

1. In preparation for your confirmation hearing before the Senate Judiciary Committee, did you meet with any staff of the Senate Judiciary Committee? **No.** If so, during those meetings, did any staff of the Senate Judiciary Committee share, reference, or provide you with information that you were led to believe were obtained or derived from Democratic sources? **Not applicable.** Did any staff of the Senate Judiciary Committee provide you any documents or excerpts from documents that appeared to you to have been drafted or prepared by Democratic staff? **No.** If so, please explain the circumstances and what action, if any, you took in response to being presented with such information or documents. **Not applicable.**

2. In preparation for your confirmation hearing before the Senate Judiciary Committee, did you meet with any staff of the U.S. Department of Justice? **Yes.** If so, during those meetings, did any staff of the Justice Department share, reference, or provide you with information that you were led to believe were obtained or derived from Democratic sources? **No.** Did any staff of the Justice Department provide you any documents or excerpts from documents that appeared to you to have been drafted or prepared by Democratic staff? **No.** If so, please explain the circumstances and what action, if any, you took in response to being presented with such information or documents. **Not applicable.**

3. In preparation for your confirmation hearing before the Senate Judiciary Committee, did you meet with any staff of the White House? **Yes.** If so, during those meetings, did any staff of the White House share, reference, or provide you

with information that you were led to believe were obtained or derived from Democratic sources? **No.** Did any staff of the White House provide you any documents or excerpts from documents that appeared to you to have been drafted or prepared by Democratic staff? **No.** If so, please explain the circumstances and what action, if any, you took in response to being presented with such information or documents. **Not applicable.**

4. In preparation for your confirmation hearing before the Senate Judiciary Committee, did you meet with anyone associated with individuals, groups, or organizations outside of government that support, endorse, or advocate in any way on behalf of the confirmation of President Bush's judicial nominees? **No.** If so, during those meetings, did any of these individuals, groups, or organizations share, reference, or provide you with information that you were led to believe were obtained or derived from Democratic sources? **Not applicable.** Did any of these individuals, groups, or organizations provide you any documents or excerpts from documents that appeared to you to have been drafted or prepared by Democratic staff? **No.** If so, please explain the circumstances and what action, if any, you took in response to being presented with such information or documents. **Not applicable.**

SANDRA L. TOWNES
ASSOCIATE JUSTICE

Appellate Division
Supreme Court of the State of New York
Second Judicial Department
401 Montgomery Street, Room 405
Syracuse, New York 13202

(315) 671-1103
FAX: (315) 671-1197

February 25, 2004

The Honorable Orrin G. Hatch
Chairman, Committee on the Judiciary
United States Senate
224 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Hatch:

Attached are my responses to the written follow-up questions of Senator Durbin.

Very truly yours,

Sandra L. Townes

Sandra L. Townes
Associate Justice

cc: Senator Patrick J. Leahy
/w
att

Responses of to the Written Follow-up Questions of Senator Richard J. Durbin

You may be aware from press accounts that the Senate Sergeant at Arms is currently conducting an investigation of the Senate Committee on the Judiciary and the wide-scale incidents of theft of memorandums and other work products drafted by Democratic staff members of the Committee. It has been reported in the press and confirmed by the Sergeant-At-Arms that thousands of staff documents were stolen by Republican staff, and that the illegal activities took place over the past several months and perhaps years.

Additionally, at least one of the alleged perpetrators, a former Republican staff member on the Judiciary Committee, has publicly admitted that many of the documents he stole and/or read related to judicial nominations. The former staff member was one of many Republican staff members who worked on judicial nominations matters for Committee Chairman Hatch and subsequently for Majority Leader Frist.

Because of your current status before the Judiciary Committee, I would like to ask you a series of questions concerning these unfortunate criminal incidents.

1. In preparation for your confirmation hearing before the Senate Judiciary Committee, did you meet with any staff of the Senate Judiciary Committee? If so, during those meetings, did any staff of the Senate Judiciary Committee share, reference, or provide you with information that you were led to believe were obtained or derived from Democratic sources? Did any staff of the Senate Judiciary Committee provide you any documents or excerpts from documents that appeared to you to have been drafted or prepared by Democratic staff? If so, please explain the circumstances and what action, if any, you took in response to being presented with such information or documents.

   Response: I did not meet with any staff of the Senate Judiciary Committee in preparation for my confirmation hearing. Further, no staff of the Senate Judiciary Committee provided documents nor excerpts from documents that appeared to me to have been drafted or prepared by Democratic staff.

2. In preparation for your confirmation hearing before the Senate Judiciary Committee, did you meet with any staff of the U.S. Department of Justice? If so, during those meetings, did any staff of the Justice Department share, reference, or provide you with information that you were led to believe were obtained or derived from Democratic sources? Did any staff of the Justice Department provide you any documents or excerpts from documents that appeared to you to have been drafted or prepared by Democratic staff? If so, please explain the circumstances and what action, if any, you took in response to being presented with such information or documents.

Response: I met with staff of the U.S. Justice Department in preparation for my confirmation hearing. During that meeting staff of the Justice Department did not share, reference, or provide me with information that I was led to believe was obtained or derived from Democratic sources or was drafted or prepared by Democratic staff. Further, staff of the U.S. Justice Department did not provide me with any documents or excerpts from documents that appeared to me to have been drafted or prepared by Democratic staff.

3. In preparation for your confirmation hearing before the Senate Judiciary Committee, did you meet with any staff of the White House? If so, during those meetings, did any staff of the White House share, reference, or provide you with information that you were led to believe were obtained or derived from Democratic sources? Did any staff of the White House provide you any documents or excerpts from documents that appeared to you to have been drafted or prepared by Democratic staff? If so, please explain the circumstances and what action, if any, you took in response to being presented with such information or documents.

Response: I believe that I met with staff of the White House in preparation for my confirmation hearing before the Senate Judiciary Committee. White House staff did not share, reference or provide me with information that I was led to believe was obtained or derived from Democratic sources. Further, no staff of the White House provided me documents or excerpts from documents that appeared to me to have been drafted or prepared by Democratic staff.

4. In preparation for your confirmation hearing before the Senate Judiciary Committee, did you meet with anyone associated with individuals, groups, or organizations outside of government that support, endorse, or advocate in any way on behalf of the confirmation of President Bush's judicial nominees? If so, during those meetings, did any of these individuals, groups, or organizations share, reference, or provide you with information that you were led to believe were obtained or derived from Democratic sources? Did any of these individuals, groups, or organizations provide you any documents or excerpts from documents that appeared to you to have been drafted or prepared by Democratic staff? If so, please explain the circumstances and what action, if any, you took in response to being presented with such information or documents.

Response: In preparation for my confirmation hearing before the Senate Judiciary Committee, I did not meet with anyone associated with individuals, groups, or organizations outside of government that support, endorse, or advocate in any way on behalf of the confirmation of President Bush's judicial nominees. Nor did any individuals, groups, or organizations provide me any documents or excerpts from documents that appeared to me to have been drafted or prepared by Democratic staff.

Responses of Louis Guirola, Jr. to the Written Follow-up Questions of Senator Richard J. Durbin

You may be aware from press accounts that the Senate Sergeant at Arms is currently conducting an investigation of the Senate Committee on the Judiciary and the wide-scale incidents of theft of memorandums and other work products drafted by Democratic staff members of the Committee. It has been reported in the press and confirmed by the Sergeant-At-Arms that thousands of staff documents were stolen by Republican staff, and that the illegal activities took place over the past several months and perhaps years.

Additionally, at least one of the alleged perpetrators, a former Republican staff member on the Judiciary Committee, has publicly admitted that many of the documents he stole and/or read related to judicial nominations. The former staff member was one of many Republican staff members who worked on judicial nominations matters for Committee Chairman Hatch and subsequently for Majority Leader Frist.

Because of your current status before the Judiciary Committee, I would like to ask you a series of questions concerning these unfortunate criminal incidents.

1. In preparation for your confirmation hearing before the Senate Judiciary Committee, did you meet with any staff of the Senate Judiciary Committee? **NO** If so, during those meetings, did any staff of the Senate Judiciary Committee share, reference, or provide you with information that you were led to believe were obtained or derived from Democratic sources? **(Not Applicable)** Did any staff of the Senate Judiciary Committee provide you any documents or excerpts from documents that appeared to you to have been drafted or prepared by Democratic staff? **NO** If so, please explain the circumstances and what action, if any, you took in response to being presented with such information or documents. **(Not Applicable)**

2. In preparation for your confirmation hearing before the Senate Judiciary Committee, did you meet with any staff of the U.S. Department of Justice? **YES** If so, during those meetings, did any staff of the Justice Department share, reference, or provide you with information that you were led to believe were obtained or derived from Democratic sources? **NO** Did any staff of the Justice Department provide you any documents or excerpts from documents that appeared to you to have been drafted or prepared by Democratic staff? **NO** If so, please explain the circumstances and what action, if any, you took in response to being presented with such information or documents.**(Not Applicable)**

3. In preparation for your confirmation hearing before the Senate Judiciary

Committee, did you meet with any staff of the White House? **YES** If so, during those meetings, did any staff of the White House share, reference, or provide you with information that you were led to believe were obtained or derived from Democratic sources? **NO** Did any staff of the White House provide you any documents or excerpts from documents that appeared to you to have been drafted or prepared by Democratic staff? **NO** If so, please explain the circumstances and what action, if any, you took in response to being presented with such information or documents. **(Not Applicable)**

4. In preparation for your confirmation hearing before the Senate Judiciary Committee, did you meet with anyone associated with individuals, groups, or organizations outside of government that support, endorse, or advocate in any way on behalf of the confirmation of President Bush's judicial nominees? **NO** If so, during those meetings, did any of these individuals, groups, or organizations share, reference, or provide you with information that you were lead to believe were obtained or derived from Democratic sources? **(Not Applicable)** Did any of these individuals, groups, or organizations provide you any documents or excerpts from documents that appeared to you to have been drafted or prepared by Democratic staff? **NO** If so, please explain the circumstances and what action, if any, you took in response to being presented with such information or documents. **(Not Applicable)**

Responses of William J. Haynes II to the Written Follow-up Questions of Senator Richard J. Durbin

You may be aware from press accounts that the Senate Sergeant at Arms is currently conducting an investigation of the Senate Committee on the Judiciary and the wide-scale incidents of theft of memorandums and other work products drafted by Democratic staff members of the Committee. It has been reported in the press and confirmed by the Sergeant-At-Arms that thousands of staff documents were stolen by Republican staff, and that the illegal activities took place over the past several months and perhaps years.

Additionally, at least one of the alleged perpetrators, a former Republican staff member on the Judiciary Committee, has publicly admitted that many of the documents he stole and/or read related to judicial nominations. The former staff member was one of many Republican staff members who worked on judicial nominations matters for Committee Chairman Hatch and subsequently for Majority Leader Frist.

Because of your current status before the Judiciary Committee, I would like to ask you a series of questions concerning these unfortunate criminal incidents.

1. In preparation for your confirmation hearing before the Senate Judiciary Committee, did you meet with any staff of the Senate Judiciary Committee? **Yes.**
   If so, during those meetings, did any staff of the Senate Judiciary Committee share, reference, or provide you with information that you were led to believe were obtained or derived from Democratic sources? **No.**
   Did any staff of the Senate Judiciary Committee provide you any documents or excerpts from documents that appeared to you to have been drafted or prepared by Democratic staff? **No.**
   If so, please explain the circumstances and what action, if any, you took in response to being presented with such information or documents. **Not applicable.**

2. In preparation for your confirmation hearing before the Senate Judiciary Committee, did you meet with any staff of the U.S. Department of Justice? **Yes.**
   If so, during those meetings, did any staff of the Justice Department share, reference, or provide you with information that you were led to believe were obtained or derived from Democratic sources? **No.**
   Did any staff of the Justice Department provide you any documents or excerpts from documents that appeared to you to have been drafted or prepared by Democratic staff? **No.**
   If so, please explain the circumstances and what action, if any, you took in response to being presented with such information or documents. **Not applicable.**

3. In preparation for your confirmation hearing before the Senate Judiciary Committee, did you meet with any staff of the White House? **Yes.**
   If so, during those meetings, did any staff of the White House share, reference, or provide you with information that you were led to believe were obtained or

derived from Democratic sources? **No.**
Did any staff of the White House provide you any documents or excerpts from documents that appeared to you to have been drafted or prepared by Democratic staff? **No.**
If so, please explain the circumstances and what action, if any, you took in response to being presented with such information or documents. **Not applicable.**

4. In preparation for your confirmation hearing before the Senate Judiciary Committee, did you meet with anyone associated with individuals, groups, or organizations outside of government that support, endorse, or advocate in any way on behalf of the confirmation of President Bush's judicial nominees? **To the best of my knowledge, no.**
If so, during those meetings, did any of these individuals, groups, or organizations share, reference, or provide you with information that you were led to believe were obtained or derived from Democratic sources? **Not applicable.**
Did any of these individuals, groups, or organizations provide you any documents or excerpts from documents that appeared to you to have been drafted or prepared by Democratic staff? **No.**
If so, please explain the circumstances and what action, if any, you took in response to being presented with such information or documents. **Not applicable.**

Responses of William J. Haynes II to Written Follow-up Questions of Senator Patrick J. Leahy

I wrote to you on September 9, 2003, to ask follow-up questions stemming from our earlier correspondence on the treatment of detainees held by the United States. On November 18, 2003, late in the evening of the day before your confirmation hearing for a seat on the Fourth Circuit Court of Appeals, I received a letter from Daniel S. Dell'Orto, Principal Deputy General Counsel for the Department of Defense, purportedly responding to my September 9 letter. In fact, Mr. Dell'Orto's letter was totally non-responsive to my questions.

I write again to ask that you, not one of your subordinates, answer these questions in your professional capacity as General Counsel of the Department of Defense (DOD):

1. Please clarify how the Administrations policy to comply with the Convention against Torture (CAT) is communicated to those personnel directly involved in detention and interrogation. As you noted in your June 25 letter, the U.S. obligation under Article 16 of the CAT is to "undertake ... to prevent" cruel, inhuman or degrading treatment of punishment.

Response: Thank you for this additional opportunity to address this very important question. In fighting any war, the Department of Defense takes its compliance with U.S. obligations very seriously, including the Convention against Torture (CAT). Though there is no specific regulatory implementation peculiar to the CAT or the policy described in my June 25, 2003 letter within the Department, those obligations are fully consistent with existing Departmental guidelines. As a matter of course the Department's military personnel are educated and trained regarding those obligations, which include the prohibition against torture. As Mr. Dell'Orto's November 18, 2003 letter explained, the Department has a formal law of war program through which it accomplishes much of this training. The Department actively seeks to prevent law of war violations in any conflict through regular and repeated training, and educating its personnel on obligations applicable to the United States. Moreover, those "in the field" are advised by judge advocates, who in today's combat environments are found at most levels of command, with advice on how to comply with those obligations. All of this is available to those military personnel tasked with the important duties of detaining enemy combatants and obtaining intelligence from those combatants in the war on terrorism, just as it would be available to any other member of the military.

2. What is the Administration doing to prevent violations of the CAT?

Response: DoD personnel are obliged to report allegations of mistreatment of enemy combatants, just as such personnel are obliged to report any misconduct.

This obligation reaches to any mistreatment, certainly including torture. Such reporting is to be done through normal command channels. While each member of the United States armed forces is responsible for complying with all applicable legal obligations, each commanding officer bears additional responsibilities of ensuring his awareness of the conduct of those serving in his command and for directing those individuals to conform their conduct to U.S. obligations. Moreover, it is DoD policy that "[a]ll reportable incidents [i.e., a possible, suspected, or alleged violation of the law of war] committed by or against U.S. or enemy persons are promptly reported, thoroughly investigated, and, where appropriate, remedied by corrective action." DoD Directive 5100.77, ¶ 4.3. (December 9, 1998). Those who have engaged in misconduct can be prosecuted for that misconduct in the military's criminal justice system. As you know, there have been recent widely publicized incidents and resulting investigations associated with allegations of mistreatment of detainees. As required by DoD policy, in appropriate cases, corrective action, including disciplinary action, follows.

3. Have any recent directives, regulations or general orders been issued to implement the policy your June 25 letter describes? If so, please provide the Committee with a copy.

Response: As I stated in my letter to you of June 25, 2003, 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. Employing torture would violate the law of war. Within the Department of Defense, those obligations are embedded within the Department's Law of War Program, which is governed by DoD Directive 5100.77 (December 9, 1998). (I have enclosed a copy of that Directive with these responses.) That Directive does many things, including articulate DoD policy that all DoD components observe the law of war and implement an effective program to prevent violations of the law of war. Rather than prohibit specific acts, the program seeks to prevent law of war violations by training and instructing DoD personnel about U. S. obligations, and ensuring that qualified legal advice is available at virtually all levels of command to provide advice on compliance with the law of war. Because the obligations reflecting the policy I described in my June 25 letter are so thoroughly resident in the Department's Law of War program, and because the policy described in that letter was not new, there was no need for this Department to issue any implementing documents.

4. 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 field 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 importantly, do interrogators working for other agencies, including the CIA, operate from the same guidelines as the Department of Defense?

Response: As stated above, the principal guidelines governing treatment of detainees under the control of the Department of Defense are embedded in the Department's Law of War program, described in the response to question 3 above. Similarly, the principal mechanisms for ensuring compliance with applicable instructions are as described in the answers above. Specifically, the Department relies on the longstanding regular and repeated training required by the Law of War program, the understanding by individual members of the armed forces of their responsibilities and obligations as they discharge those responsibilities, the understanding and supervision by officials in the chain of command, the availability of legal advice at virtually all levels of command, and the obligation to report violations of the Law of War. As noted in my June 25, 2003 letter, it would not be appropriate to catalogue the interrogation techniques employed by U. S. personnel in fighting international terrorism. With respect to guidelines employed by agencies other than the Department of Defense, I am unable to speak authoritatively and respectfully suggest that you contact those agencies.

I also request that you answer questions that I submitted to you in writing after your November 19, 2003, hearing and to which you have not responded in a satisfactory manner. I ask that you respond in your professional capacity rather than in your personal capacity. Please provide comprehensive answers to the following questions:

1.f. [Regarding the case of Maher Arar, a Canadian and Syrian citizen who was deported by the U.S. to Syria, a country with a documented history of torture and inhumane treatment of detainees.] What obligations does the United States have in response to news reports on Mr. Arar, and are you aware of any investigations the U.S. has undertaken with regard to the rendition and alleged torture of Mr. Arar?

Response: The Department of Defense has no responsibility for the implementation of the immigration laws. Because I am not familiar with the facts concerning Mr. Arar's deportation and subsequent treatment, I am hesitant to express a view on any obligations based solely on news accounts. I respectfully suggest that you contact the Department of Justice or the Department of Homeland Security because one of those departments likely would conduct any such investigation.

In addition to fully responding to question 1.1. please answer the following:

i. If you are not aware of the facts concerning Mr. Arar's detention, removal, refoulement or rendition, please explain why that is so?

Response: Until recently, the Department of Justice was responsible for immigration matters, including deportations. I understand that the Department of Homeland Security is now responsible for such matters. The Department of Defense has no responsibility for the implementation of the immigration laws. Accordingly, the General Counsel of the Department of Defense is not routinely made aware of deportation decisions, and certainly not the details or mechanics associated with deportations.

ii. Was DOD not involved or consulted in any way in the decision—before or after the fact—to seize this Canadian citizen at a U.S. airport and send him to Syria?

Response: The Department of Defense has no responsibility for the implementation of the immigration laws. To the best of my knowledge, no members of this Department participated in any decision to deport Mr. Arar, nor were they aware of the details associated with such deportation. Though I do not recall this, I have learned that a member of my staff informed me that the Department of Justice had asked whether the Department of Defense had any information about Mr. Arar. (I am not aware that this Department provided any information.)

iii. Is DOD involved in any way in decisions to refuse individuals entry into the United States and remove such individuals or render them to other countries? If so, why did you, the General Counsel of DOD, say you were not aware of this case? Was Mr. Arar's situation handled differently from, any other decisions to remove or render foreigners?

Response: Please see the answers to the questions immediately above.

iv. If you were not informed of or advised about this situation, who if anyone at DOD was informed or consulted?

Response: Please see the answers to the questions immediately above.

1.g. 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.

Response: While I understand your interest concerning the treatment of those detained in the war on terror, it would be inappropriate for me to discuss in a forum such as this the existence of any finding, should one exist. Generally presidential findings are to be submitted prior to the initiation of a covert action (50 U.S.C. § 413(a)). Additionally, such "[a] finding may not authorize any action that would violate the Constitution or any statute of the United States" (50 U.S.C. § 413b(a)(5)). As you may be aware, in most circumstances, the President is to ensure that findings are "reported

to the congressional intelligence committees as soon as possible after" their approval (50 U.S.C. § 413b(c)(1)). The statute also permits the President to limit the reporting of a finding to certain members of Congress rather than to the full intelligence committees, in "extraordinary circumstances affecting the vital interests of the United States" (50 U.S.C. § 413b(c)(2)). I would also note that as a general matter the congressional intelligence committees "are kept fully and currently informed of the intelligence activities of the United States" (50 U.S.C. § 413). As you know, the internal rules of the Senate address access by Senators to information in the custody of the Senate Select Committee on Intelligence.

1.h. Please describe in detail any other cases where the U.S. has participated in the rendition of an individual to a foreign government. Please provide the following:
   i. the names of any such individuals;
   ii. the countries to which they were rendered;
   iii. the dates they were rendered;
   iv. any countries that served as transfer points or intermediaries in such renditions;
   v. whether assurances were obtained from cooperating foreign governments that the individual would not be subject to torture, or to cruel, or inhuman, or degrading treatment or punishment, while in the custody of the foreign government;
   vi. whether the United States took steps after any renditions to assess compliance with such assurances; and
   vii. whether such assurances were provided in writing. If any such assurances were provided in writing, please provide copies to the Committee. If any of the above information is classified, please arrange a briefing for cleared staff. If relevant documents are classified, please arrange for cleared staff to view them. If no assurances were obtained, please explain why not.

Response: I respectfully suggest that you contact the Departments of Justice and Homeland Security for any information about immigration matters.

2.a. In its efforts 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, November 11, 2003, High Court Will Hear appeals From Guantanamo Prisoners. For example, in defending its detention of Jose Padilla as an enemy combatant, the Government stated [t]he executive made a finding that intelligence gathering with respect to al-Qaida was so important that they didn't want to take all these tools off the table."

On November 19, the Washington Post reported that a U.S. official stated that when Mr. Arar was apprehended, he had the names of a large number of known al Qaeda operatives, affiliates or associates in his wallet or pockets."

An earlier Washington Post editorial stated, "[i]f credible intelligence linked [Mr. Arar]

to al Qaeda, Mr. Arar could have been designated an enemy combatant and held at Guantanamo Bay. The trouble with this solution is that the legal process given alleged enemy combatants is so opaque and unfair. The military won't provide data on who is being held at Guantanamo or the standards used to keep people there. Were there some publicly understood process for handling these cases, so that sending a suspected enemy combatant to Guantanamo was not the same as dumping him into a legal black hole, authorities would have an option for people such as Mr. Mar other than torture in Syria and freedom in Canada,

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.

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? If so, on what basis was the decision made to send him to Syria?

Response: As noted above, I am not familiar with the facts associated with Mr. Arar.

Responses of Virginia E. Hopkins to the Written Follow-up Questions of Senator Richard J. Durbin

You may be aware from press accounts that the Senate Sergeant at Arms is currently conducting an investigation of the Senate Committee on the Judiciary and the wide-scale incidents of theft of memorandums and other work products drafted by Democratic staff members of the Committee. It has been reported in the press and confirmed by the Sergeant-At-Arms that thousands of staff documents were stolen by Republican staff, and that the illegal activities took place over the past several months and perhaps years.

Additionally, at least one of the alleged perpetrators, a former Republican staff member on the Judiciary Committee, has publicly admitted that many of the documents he stole and/or read related to judicial nominations. The former staff member was one of many Republican staff members who worked on judicial nominations matters for Committee Chairman Hatch and subsequently for Majority Leader Frist.

Because of your current status before the Judiciary Committee, I would like to ask you a series of questions concerning these unfortunate criminal incidents.

1. In preparation for your confirmation hearing before the Senate Judiciary Committee, did you meet with any staff of the Senate Judiciary Committee? If so, during those meetings, did any staff of the Senate Judiciary Committee share, reference, or provide you with information that you were lead to believe were obtained or derived from Democratic sources? Did any staff of the Senate Judiciary Committee provide you any documents or excerpts from documents that appeared to you to have been drafted or prepared by Democratic staff? If so, please explain the circumstances and what action, if any, you took in response to being presented with such information or documents.

   Response: No. I did not meet with any staff of the Senate Judiciary Committee in preparation for my confirmation hearing. No member of the Senate Judiciary Committee staff provided me with information that I was led to believe was obtained or derived from Democratic sources. No member of the Senate Judiciary Committee staff provided me with any documents or excerpts from documents that appeared to me to have been drafted or prepared by Democratic staff.

2. In preparation for your confirmation hearing before the Senate Judiciary Committee, did you meet with any staff of the U.S. Department of Justice? If so, during those meetings, did any staff of the Justice Department share, reference, or provide you with information that you were lead to believe were obtained or derived from Democratic sources? Did any staff of the Justice Department provide you any documents or excerpts from documents that appeared to you to have been drafted or prepared by Democratic staff? If so, please explain the circumstances and what action, if any, you took in response to being presented

with such information or documents.

Response: In preparation for my November 19, 2003 confirmation hearing before the Senate Judiciary Committee, I met with staff of the U.S. Department of Justice on November 18, 2003. No member of the U.S. Department of Justice staff shared, referenced, or provided me with information that I was led to believe was obtained or derived from Democratic sources. No member of the U.S. Department of Justice staff provided me any documents or excerpts from documents that appeared to me to have been drafted or prepared by Democratic staff.

3. In preparation for your confirmation hearing before the Senate Judiciary Committee, did you meet with any staff of the White House? If so, during those meetings, did any staff of the White House share, reference, or provide you with information that you were lead to believe were obtained or derived from Democratic sources? Did any staff of the White House provide you any documents or excerpts from documents that appeared to you to have been drafted or prepared by Democratic staff? If so, please explain the circumstances and what action, if any, you took in response to being presented with such information or documents.

Response: In preparation for my November 19, 2003 confirmation hearing before the Senate Judiciary Committee, I met with staff of the White House on November 18, 2003. No member of the White House staff provided me with information that I was led to believe was obtained or derived from Democratic sources. No member of the White House staff provided me with any documents or excerpts from documents that appeared to me to have been drafted or prepared by Democratic staff.

4. In preparation for your confirmation hearing before the Senate Judiciary Committee, did you meet with anyone associated with individuals, groups, or organizations outside of government that support, endorse, or advocate in any way on behalf of the confirmation of President Bush's judicial nominees? If so, during those meetings, did any of these individuals, groups, or organizations share, reference, or provide you with information that you were lead to believe were obtained or derived from Democratic sources? Did any of these individuals, groups, or organizations provide you any documents or excerpts from documents that appeared to you to have been drafted or prepared by Democratic staff? If so, please explain the circumstances and what action, if any, you took in response to being presented with such information or documents.

Response: No. I did not meet with anyone associated with individuals, groups, or organizations outside of government that support, endorse, or advocate in any way on behalf of the confirmation of President Bush's judicial nominees. No one provided me with information that I was led to

believe was obtained or derived from Democratic sources. No one provided me with any documents or excerpts from documents that appeared to me to have been drafted or prepared by Democratic staff.

Kenneth M. Karas
February 25, 2004

Responses of Kenneth M. Karas to the Written Follow-up Questions of Senator Richard J. Durbin

You may be aware from press accounts that the Senate Sergeant at Arms is currently conducting an investigation of the Senate Committee on the Judiciary and the wide-scale incidents of theft of memorandums and other work products drafted by Democratic staff members of the Committee. It has been reported in the press and confirmed by the Sergeant-At-Arms that thousands of staff documents were stolen by Republican staff, and that the illegal activities took place over the past several months and perhaps years.

Additionally, at least one of the alleged perpetrators, a former Republican staff member on the Judiciary Committee, has publicly admitted that many of the documents he stole and/or read related to judicial nominations. The former staff member was one of many Republican staff members who worked on judicial nominations matters for Committee Chairman Hatch and subsequently for Majority Leader Frist.

Because of your current status before the Judiciary Committee, I would like to ask you a series of questions concerning these unfortunate criminal incidents.

1. In preparation for your confirmation hearing before the Senate Judiciary Committee, did you meet with any staff of the Senate Judiciary Committee? If so, during those meetings, did any staff of the Senate Judiciary Committee share, reference, or provide you with information that you were led to believe were obtained or derived from Democratic sources? Did any staff of the Senate Judiciary Committee provide you any documents or excerpts from documents that appeared to you to have been drafted or prepared by Democratic staff? If so, please explain the circumstances and what action, if any, you took in response to being presented with such information or documents.

   Response: I did not meet with any staff of the Judiciary Committee in preparation for my confirmation hearing before the Senate Judiciary Committee.

2. In preparation for your confirmation hearing before the Senate Judiciary Committee, did you meet with any staff of the U.S. Department of Justice? If so, during those meetings, did any staff of the Justice Department share, reference, or provide you with information that you were led to believe were obtained or derived from Democratic sources? Did any staff of the Justice Department provide you any documents or excerpts from documents that appeared to you to have been drafted or prepared by Democratic staff? If so, please explain the circumstances and what action, if any, you took in response to being presented with such information or documents.

Kenneth M. Karas
February 25, 2004

Response: I met with staff from the U.S. Department of Justice in preparation for my confirmation hearing before the Senate Judiciary Committee. During this meeting, no staff of the Justice Department shared, referred to, or provided me with information that I was led to believe was obtained or derived from Democratic sources. Nor did any staff of the Justice Department provide me with any documents or excerpts from documents that appeared to me to have been drafted or prepared by Democratic staff.

3. In preparation for your confirmation hearing before the Senate Judiciary Committee, did you meet with any staff of the White House? If so, during those meetings, did any staff of the White House share, reference, or provide you with information that you were led to believe were obtained or derived from Democratic sources? Did any staff of the White House provide you any documents or excerpts from documents that appeared to you to have been drafted or prepared by Democratic staff? If so, please explain the circumstances and what action, if any, you took in response to being presented with such information or documents.

Response: I met with staff from the White House in preparation for my confirmation hearing before the Senate Judiciary Committee. During this meeting, no staff of the White House shared, referred to, or provided me with information that I was led to believe was obtained or derived from Democratic sources. Nor did any staff of the White House provide me with any documents or excerpts from documents that appeared to me to have been drafted or prepared by Democratic staff.

4. In preparation for your confirmation hearing before the Senate Judiciary Committee, did you meet with anyone associated with individuals, groups, or organizations outside of government that support, endorse, or advocate in any way on behalf of the confirmation of President Bush's judicial nominees? If so, during those meetings, did any of these individuals, groups, or organizations share, reference, or provide you with information that you were led to believe were obtained or derived from Democratic sources? Did any of these individuals, groups, or organizations provide you any documents or excerpts from documents that appeared to you to have been drafted or prepared by Democratic staff? If so, please explain the circumstances and what action, if any, you took in response to being presented with such information or documents.

Response: In preparation for my confirmation hearing, I did not meet with anyone associated with individuals, groups, or organizations outside of government that support, endorse, or advocate in any way on behalf of the confirmation of President Bush's judicial nominees.