



**Statement of Frederick P. Hitz  
to the House Committee on Foreign Affairs'  
Subcommittee on International Organizations, Human Rights and Oversight  
and  
the Committee on the Judiciary's Subcommittee on the Constitution, Civil  
Rights and Civil Liberties  
in the hearing entitled, "Rendition to Torture: The case of Maher Arar"  
Thursday, October 18, 2007**

My name is Frederick Hitz. I am a retired career intelligence officer having worked at the Central Intelligence Agency for over twenty years, retiring in 1998 after serving as the Agency's first statutory Inspector General. Since that time I have been teaching at the Woodrow Wilson School of Princeton University and at the University of Virginia in the Department of Politics and the School of Law.

Last year at this time I was asked to write the United States' voice for the publication "One Issue, Two Voices" on **Intelligence Sharing between Canada and the United States** in the aftermath of publication in September 2006 of Mr. Justice O'Connor's *Report of the Events Relating to Maher Arar*. ("One Issue, Two Voices" is an occasional publication of the Canada Institute of the Woodrow Wilson International Center for Scholars, headquartered here in Washington DC, that seeks to explore a Canadian and US viewpoint on a prominent issue of the day affecting both countries.) I am submitting for the Committee's record a copy of Issue Six of "One Issue, Two Voices", published in January 2007 that sets forth my views on the potential adverse impact of the Arar case on intelligence sharing between the US and Canada.

In reading the four volume O'Connor report I was bowled over by the extent of the tragedy that befell Mr. Arar. In straight-forward prose Justice O'Connor chronicles the mistakes that led to erroneous information that Mr. Arar was a member of Al Qaeda and how that intelligence was inappropriately provided to US authorities, such that Mr. Arar was placed on a watch list at US points of international entry. Mr. Justice O'Connor is unsparing in his criticism of the flawed Canadian process, making use of the services of a unit of the Royal Canadian Mounted Police (RCMP) that had had no previous experience on investigating and reporting on intelligence matters, to accumulate the dossier on Mr. Arar. I am certain this finding was crucial in the Canadian Government's decision to award Mr. Arar \$7 million in compensation for his ordeal. No less tragic in my view was the use to which US immigration authorities put this erroneous derogatory information on Mr. Arar, when he landed at Kennedy airport in September 2002 on his way home from Tunis to Toronto via Zurich and New York City.

Mr. Justice O'Connor acknowledges that since the United States refused to participate in his inquiry, he can only speculate, but he believes US immigration authorities relied on the mistaken Canadian intelligence to summarily deport Mr. Arar to Damascus, where he was incarcerated by the Syrian intelligence service and beaten repeatedly with an electric cable before the Syrians concluded some weeks later that he was not Al Qaeda. Importantly, in my view, Mr. Justice O'Connor notes that the Canadian government was never notified by US immigration authorities in New York that Mr. Arar was going to be removed to Syria, contrary to the usual working arrangements on such matters between the two countries.

Upon learning that Mr. Arar was removed to Syria, by private aircraft to Amman, Jordan and then by automobile to Damascus, I concluded that Mr. Arar's summary deportation was tantamount to an "extraordinary rendition" and should be regarded as such. Admitting, as Justice O'Connor finds, that the principle cause of the Arar tragedy is the mistaken intelligence provided US authorities by the Canadian

Government, nonetheless the decision by US authorities to deport Mr. Arar summarily to Syria without consulting with the Canadian Government was unwarranted and has had the effect of "cooling" relations with Canadian border and intelligence authorities on intelligence sharing, as my co-author Robert Henderson stated in his account of the matter in "One Issue, Two Voices".

Actually, I take this issue further and oppose "extraordinary renditions" categorically. I recall when the practice of "renditions" began during the Clinton Administration after the 1993 World Trade bombings when the US was able to persuade Pakistan to turn Ramzi Yousef over to the FBI to face trial in New York, and subsequently when the shooter at CIA, Mir Amal Kansi, was turned over, again by the Pakistanis, to face trial in Fairfax County, Virginia. "Rendition" then referred to a practice whereby US intelligence and law enforcement authorities, often working together, "snatched" alleged terrorist suspects outside the US, on the high seas and sometimes with the help of other sovereign nations to stand trial for their crimes in US Courts. This practice arose out of the Congress's decision to pass statutes in the 1980s with extraterritorial reach, making it a federal crime to commit terrorist acts against US citizens abroad.

The concept of "renditions" mutated after 9/11 when the gloves were taken off law enforcement and intelligence, to refer to the situation where instead of "snatching" the suspected terrorist for trial in the US, we delivered them to allied nations for interrogation under rules and circumstances that resulted in the use of interrogation methods beyond what would have been permitted to US authorities. In some instances, we sought to protect ourselves against blow back by writing a letter to the foreign liaison contact seeking assurances that the methods used would be congruent with international law, but the letter was exchanged at such a low level diplomatically, and in such boilerplate language, that it was really meaningless as a restraint on the practices of nations with poor human rights records. I believe this is doing indirectly what US officials would be prohibited from doing directly and is unwise, if not illegal. If it is not currently considered to be an illegal practice, I believe the US should make it so. I view it much as I do the executive order prohibition on political assassination. We should not be in the business of coercive torturous interrogations directly or indirectly.

Why, you may inquire, should we give up the practice of "extraordinary renditions" if we are not involved in the illegal behavior ourselves and can profit from the fruits of the interrogation? I would argue that the Arar case shows we cannot shield ourselves from responsibility for illegal interrogations, where we supply the victim, whether we want to or not. I believe there should be only one standard for hostile interrogation of terror suspects, that of the Army Field Manual based on the Geneva Conventions, as indicated by the Detainee Treatment Act, passed by Congress in 2006.

It is unwise to hold the CIA and the Intelligence Community to a different standard than that of Common Article Three of the Geneva Conventions with its prohibition of "cruel and inhuman treatment".

I believe the possibility of illegal coercive interrogations undercuts international intelligence cooperation in the war on terrorism; and adversely affects the morale of intelligence personnel who engage in it. I was horrified at the thought that CIA operations officers felt so unprotected by their own government that they felt compelled to take out personal insurance against being sued for torturous acts, as reported in the press several months ago.

I feel certain that just as CIA operations officers were pleased when the Hughes-Ryan Act of 1974 required that all covert action operations had to be accompanied by a presidential finding that they were in the national security interest of the United States, so would they applaud a uniform governmental prohibition against interrogation practices directly or indirectly authorized by the US Government that contravene the Geneva Conventions and the Detainee Treatment Act of 2006.

Thank you for your attention.