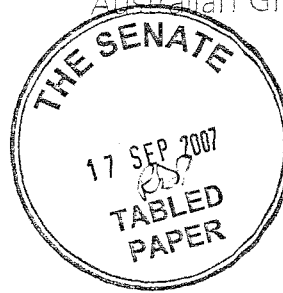




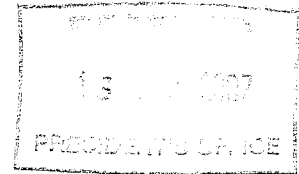
Australian Senate

Appendix 1  
Kerry Nettle

Australian Greens Senator for NSW



By Hand



Senator the Hon. Alan Ferguson  
President of the Senate  
Parliament House  
Canberra ACT

13 September 2007

Dear Mr President,

*Alan*

**Re: - Matter of privilege: Apprehension of misleading evidence provided to the Legal and Constitutional Affairs Committee.**

I refer to the above matter and correspondence from your predecessor; Senator Calvert to me dated 14 June 2007.

I write to you in order to raise a matter of privilege in accordance with Senate Standing Order 81 and request that it be given precedence to enable the Senate Privileges Committee to investigate and report on this matter without delay.

#### MATTER OF PRIVILEGE

As you may be aware, serious and credible evidence exists in the public realm that Australian Government officials were aware that dual Australian/Egyptian citizen Mr Mamdouh Habib was rendered to Egypt in November 2001 to be tortured despite the Australian Federal Police and Attorney General's Department not providing this information and in fact possibly providing misleading evidence to a number of Senate Estimates Committee hearings when asked about this matter since that time.

Specifically, the ABC *Four Corners* report of 11 June 2007 "*Ghost Prisoners*" provided evidence that Australian diplomatic cables and Australian Federal police reports confirmed Government agencies knew Mamdouh Habib was sent to Egypt from Pakistan in November 2001. However at least until 14 February 2005 Mr Robert Cornall, the Secretary of the Attorney-General's Department maintained to a number of Senate Estimates Committees that the Government was not aware of Mr Habib's location.

Likewise, *Four Corners* also revealed evidence that the Federal Police liaison officer in Islamabad corresponded to AFP head office on November 19, 2001, stating that Mr Habib had been "*removed to the country of his birth.*" Whereas by way of letter AFP Commissioner Keelty informed the Senate Legal & Constitutional Affairs Committee of 23 August 2007 that the AFP still maintains "*to date the AFP has not received official confirmation from any source that Mr Habib was definitely in Egypt during his time in custody.*"

I also draw your attention to the credible statements made by Mr Michael Scheuer, Chief/Special Advisor, CIA Bin Laden Unit, 1996-04, When asked on *Four Corners* if the Australian Government would have been informed that Mr Habib was being sent to Egypt. He replied;

*"Oh I would think so. It's very unusual for that serious of an operation to be conducted without the knowledge of the ally who is involved and that's especially the case with Australia, Britain, Canada and, on again off again, New Zealand."*

Similarly Mr Jack Cloonan, Senior Special Agent, FBI's Bin Laden Unit, 1996-02 is also reported on *Four Corners* as saying:

*"It would seem to me very unlikely given the close relationship between us and the Australians that they would not have been informed [about Mr Habib's rendition]. ... We share things with the Australian Government, intelligence-wise, and so we would tell ASIO as a matter of courtesy, they would have been involved in this, one of their citizens, they're the lead agency."*

Accordingly, I trust you are satisfied the evidence above establishes a prima facie case that the Senate may have been misled by Australian Government agencies that warrants this matter be given precedence in order for the Senate's Privilege Committee to investigate and report on this matter.

As you may be aware, at the previous Senate President's suggestion the Senate Legal and Constitutional Affairs Committee, decided to write to both the AFP and Secretary of the Attorney Generals department on 25 July 2007 seeking clarification of the issues raised in the general above. In my view, the answers from the both the Australian Federal Police and Secretary of the Attorney Generals Department have not adequately explained these inconsistencies. As a consequence of the Legal and Constitutional Affairs Committee declining to deal with this matter despite receiving answers to its correspondence that in my view warranted further investigation, this matter again becomes your responsibility and the responsibility of the Senate. Therefore, I seek your assistance as a consequence of the Legal and Constitutional Affairs Committee declining to take further action about this important issue.

#### PREVIOUS RULINGS OF THE SENATE PRESIDENT

As you may be aware, appendix four of *Odgers Senate Practice* [at pp643-649] reveals that on every single occasion of the thirteen times a Senator has raised a matter of privilege relating to possible false or misleading evidence being provided to the Senate previous Presidents have always ruled that the matters of privilege raised be given precedence. The extract from *Odgers* below summarises these determinations:

DATE AND JOURNAL REFERENCE	SENATOR	SUBJECT	RULING RE DETERMINATION OF PRECEDENCE
1. 7.11.88 J.1089	Chaney	Possible false or misleading evidence and manipulation of evidence before Senate	Given

		Committees — Travel by Aboriginal community representatives		
2.	5.12.88 J.1237	MacGibbon	Possible false or misleading evidence before a Senate Estimates Committee — Department of Defence Project Parakeet	Given
3.	23.8.90 J.232	Newman	Possible misleading evidence before a Senate Estimates Committee — Department of Defence — asbestos in RAN ships	Given
4.	19.5.93 J.193	Watson	Possible false or misleading evidence given to the Senate or a Senate Committee — Midford Paramount inquiry	Given
5.	29.9.93 J.528	Ferguson	Possible false or misleading information given to Senate or Estimates Committee	Given
6.	9.3.95 J.3069	Murphy Newman	Alleged false or misleading information given to the former Select Committee on Public Interest Whistleblowing	Given
7.	24.6.96 J.364-5	Murphy	Alleged false or misleading evidence given to the Select Committee on Unresolved Whistleblower Cases	Given
8.	22.8.96 J.491	Patterson	Alleged false or misleading evidence given to the Environment, Recreation, Communications and the Arts Legislation Committee	Given
9.	6.5.97 J.1830	Margetts Bolkus	Alleged false or misleading statements tabled in the Senate	Given
10.	4.12.97 J.3206	Woodley	Possible misleading evidence before the Select Committee on Unresolved Whistleblower Cases	Given

11. 27.2.2001 J.3948	Collins	Possible improper interference with witnesses and possible false or misleading evidence before the Employment, Workplace Relations, Small Business and Education Legislation Committee	Given
12. 18.9.2001 J.4854	Ferris	Possible misleading evidence before Native Title Committee	Given
13. 24.3.2004 J.3215	Mackay	Possible misleading evidence before Environment, Communications, Information Technology and the Arts Legislation Committee	Given

As you can see from the table above, the previous occasions that the President of the Senate has given a matter of privilege precedence are consistent, broad and non-partisan.

For all of these reasons I urge you to give this matter precedence in order to maintain the standing of the institution of the Australian Senate.

I also take this opportunity to underline that allegations of torture and rendition of an Australian citizen are amongst the most serious allegations the Australian Senate has ever heard.

If you would like further information please contact me.

I look forward to your reply.

Yours sincerely,



Senator Kerry Nettle