



11 October 2007

Dr Rosemary Laing  
Secretary  
Committee of Privileges  
Australian Senate  
Parliament House  
CANBERRA ACT 2600

Dear Dr Laing

**Mr Mamdouh Habib**

I acknowledge Senator John Faulkner's letter dated 20 September 2007.

The Committee of Privileges has sought my comments about the terms of reference and the issues canvassed in Senator Nettle's letter to the President of the Senate dated 13 September 2007.

*Terms of reference*

I have no comment on the terms of reference.

*Preliminary observations*

I make the following preliminary observations:

1. The issue before the Committee is whether false or misleading evidence was given in relation to the Government's knowledge of the rendition of Mr Mamdouh Habib to Egypt.
2. All of my evidence in relation to Mr Habib was given to the Senate Legal and Constitutional Committee in response to questions at Estimates hearings.
3. At Estimates, I respond to questions as Secretary of the Attorney-General's Department.
4. Where appropriate, I provide answers which encompass the activities of agencies within the Attorney's portfolio and, on occasions, another department. In those cases, my answers are based on briefings received from that agency or department before the Estimates hearing.
5. The Attorney-General's Department did not have any operational involvement with Mr Habib overseas until we coordinated his return to Australia. My responses to questions in relation to Mr Habib were based on briefings I received in preparation for Estimates.
6. All of my answers about Mr Habib were a correct statement of my understanding and instructions about Mr Habib and his whereabouts.

7. My consistent response was that the Government believed Mr Habib had been taken to Egypt but that the Egyptian Government had never acknowledged that he was in their custody.
8. Similar responses were provided by Commissioner Keelty and Mr Dennis Richardson. There is, in my view, no inconsistency in this evidence.
9. These responses were consistent with public statements by Ministers about the Habib matter.

In support of these comments, I attach:

- Extracts of evidence given at Senate and Legal and Constitutional Committee hearings by me, Commissioner Keelty and Mr Richardson between 28 May 2002 and 15 February 2005 (Attachment A)
- Extracts from responses to Parliamentary and Committee questions (Attachment B), and
- Extracts from statements by Government Ministers (Attachment C).

*Senator Nettle's letter*

The one assertion Senator Nettle makes against me is that 'at least until 14 February 2005 Mr Robert Cornall ... maintained to a number of Senate Estimates Committees that the Government was not aware of Mr Habib's location'.

This is not correct. My evidence was always consistent with the position outlined in paragraph 7 above, as can be seen from the following two examples:

- On 28 May 2002, I said in response to a question from Senator McKiernan '...we do not have any knowledge of what occurred when he was held in Egypt', and
- On 24 May 2004, I told Senator Bolkus '...we have a great deal of difficulty knowing what if anything occurred in relation to Mr Habib in Egypt because the Egyptians have never acknowledged that he was in their custody'.

I hope this information is of assistance to the Committee. Please let me know if anything further is required.

Yours sincerely



Robert Cornall AO  
Secretary

## Attachment A

<b>EVIDENCE GIVEN AT SENATE LEGAL AND CONSTITUTIONAL COMMITTEE HEARINGS BY AGD, AFP AND ASIO – HABIB AND EGYPT MATTER</b>		
28 May 2002		
Person	Evidence	Transcript reference
Robert Cornall	<p>Senator McKiernan—“The article in the Sydney Morning Herald...indicated that Mr Habib had claimed that he had been kept blindfolded for eight months. Were the investigators able to confirm that this was the case...?”</p> <p>Mr Cornall—“I think Mr Habib was referring to the time he was held in Egypt, and we do not have any knowledge of what occurred when he [Mr Habib] was held in Egypt.”</p>	SL&CLC, p 283
24 May 2004		
Person	Evidence	Transcript reference
Robert Cornall	<p>Senator Bolkus—“With respect to Mr Habib, last time we canvassed whether he had been badly treated or whether he had raised any complaint about his treatment...in Egypt or elsewhere... Is there a response to that?”</p> <p>Mr Cornall—“...My understanding is that we have a great deal of difficulty knowing what if anything occurred in relation to Mr Habib in Egypt because the Egyptians have never acknowledged that he was in their custody.”</p>	SL&CLC, p 16
	<p>Senator Bolkus—“Did we know, for instance, that he [Habib] was being sent from Pakistan to Egypt? Were you consulted on that?”</p> <p>Mr Cornall—“No, I do not believe we were consulted.”</p> <p>Senator Bolkus—“Were you advised?”</p> <p>Mr Cornall—“Senator, I will read you my briefing notes on this. They say that inquiries were made about Mr Habib’s welfare upon his capture by Pakistan authorities in 2001. The Australian government immediately sought consular access to Mr Habib in Pakistan. Australian officials were granted access to Mr Habib for nonconsular purposes on 29 October 2001 and reported that he showed no signs of physical maltreatment. Before consular access was granted the government became aware that he had likely been moved to Egypt. I do not know how the government became aware that he had been moved to Egypt. Despite numerous requests for access by the government, including at the highest levels, Egypt has never acknowledged it had Mr Habib in custody.”</p>	SL&CLC, p 17
14 February 2005		
Person	Evidence	Transcript reference
Robert Cornall	Senator Bolkus—“Mr Habib has made claims of torture in three environments. Let us start with his travel to Egypt. I know we have	SL&CLC, p 8

	<p>gone through some of these questions before but I do not know that we got clear answers. We were advised that he was going to be taken to another jurisdiction?”</p> <p>Mr Cornall—“No, we were not.”</p> <p>Senator Bolkus—“When did we first find out?”</p> <p>Mr Cornall—“Sometime after he had been transferred.”</p> <p>Senator Bolkus—“How did we find out?”</p> <p>Mr Cornall—“ASIO was the source of information that he had been transferred.”</p> <p>Senator Bolkus—“Did we manage to ascertain how he was transferred?”</p> <p>Mr Cornall—“Not that I am aware, no.”</p> <p>Senator Bolkus—“Suggestions that he was taken by plane are new to you, are they? You had no knowledge of them before?”</p> <p>Mr Cornall—“I have read them in media reports, but we do not know how he got to Egypt, if that is in fact where he was.”</p> <p>Senator Bolkus—“You still cannot confirm that he went to Egypt?”</p> <p>Mr Cornall—“Mr briefing is that we have never received any confirmation from the Egyptian government that he was in their custody. That is as far as I can take that matter.”</p>	
	<p>Senator Bolkus—“He [Habib] goes to Egypt. Have you inquired of the Egyptian government as to whether Mr Habib was taken there?”</p> <p>Mr Cornall—“Mr department has not made that inquiry. Really that is a matter for the Department of Foreign Affairs and Trade.”</p> <p>Senator Bolkus—“Yes and no, Mr Cornall. In the first instance they are in a position to ask but, at the same time, if you have an Australian citizen making claims of torture and it has come to you through security briefings, you have probably got a responsibility to find out what in fact did happen.”</p> <p>Mr Cornall—“I would assume that the Department of Foreign Affairs and Trade had the same information.”</p> <p>Senator Bolkus—“They had the same information, but did you inquire as to whether he was taken to Egypt? Did you ask Foreign Affairs to find out for you?”</p> <p>Mr Cornall—“As I have previously told this committee, we were informed by ASIO that he had likely been taken to Egypt sometime after that event had occurred.”</p> <p>Senator Bolkus—“Would they have advised the minister that it was likely that he had been taken to Egypt?”</p> <p>Mr Cornall—“Yes, I would assume so.”</p> <p>Senator Bolkus—“When were you advised?”</p> <p>Mr Cornall—“I cannot remember the precise date.”</p> <p>Senator Bolkus—“About October or November 2001? The following year?”</p> <p>Mr Cornall—“No, it would have been sometime after the transfer from Pakistan had taken place, but not long after.”</p> <p>Senator Bolkus—“So it would have been the end of 2001?”</p> <p>Mr Cornall—“Yes.”</p> <p>Senator Bolkus—“Over three years ago. Have you made further inquiries since then to ascertain whether he was taken to Egypt?”</p>	<p>SL&amp;CLC, p 10-14</p>

	<p>Mr Cornall—"I understand a number of inquiries have been made by the Department of Foreign Affairs and Trade and that the Egyptian government have never confirmed that he was in its custody."</p> <p>....</p> <p>Mr Cornall—"You keep asking me as the Secretary of the Attorney-General's Department. Many of these matters fall into the category of international relations and they are appropriately dealt with by the Department of Foreign Affairs and Trade."</p> <p>....</p> <p>Mr Cornall—"We were not consulted about his [Habib's] transfer from Pakistan, and there was no Australian official present when he was transferred from Pakistan."</p> <p>....</p> <p>Mr Cornall—"...As I have said before, we have made numerous inquiries of the Egyptian government concerning Mr Habib's treatment in Egypt, and it has never confirmed that he was held by them."</p> <p>....</p> <p>Senator Bolkus—"You say we have not established whether he [Habib] was sent to Egypt. You might want to take this on notice: what inquiries have we made to ascertain whether he had been taken to Egypt?"</p> <p>Mr Cornall—"That is really a matter for ASIO or the Department of Foreign Affairs and Trade, but I will take it on notice and we will answer it as best as we are able to."</p>	
	<p>Mr Cornall—"My understanding is...that no person from the Department of Foreign Affairs and Trade saw Mr Habib in Pakistan. Officers from the AFP and ASIO did see him in Pakistan, but no Australian official witnessed any mistreatment. No Australian official agreed to his transfer to Egypt, if that is how it happened, and no Australian official was present when he was transferred from Pakistan."</p> <p>Senator Ludwig—"The reason you know this is that you have been briefed by the Department of Foreign Affairs or another agency?"</p> <p>Mr Cornall—"No. I had a meeting with them, in anticipation of today's hearing, to ensure that I had the most current information to provide the committee."</p>	SL&CLC, p 18
	<p>Senator Bolkus—"You were not told that they [ASIO] had lost contact with him [Habib], if they had lost contact with him?"</p> <p>Mr Cornall—"As I said at the last estimates, we were told some time after the end of October that he was no longer in Pakistan and that it was likely that he was in Egypt. That is in the <i>Hansard</i> of the last estimates."</p>	SL&CLC, p 19
15 February 2005		
Person	Evidence	Transcript reference
Mick Keelty	<p>Senator Ludwig—"Did you make any effort to ascertain where he [Habib] went to after 29 October [2001]?"</p> <p>Mr Keelty—"No. We are obviously aware that it is alleged that he went to Egypt, but we are unable to confirm that."</p> <p>[Note: Correction made, see details on page 8]</p>	SL&CLC, p 8

	<p>Senator Allison—“You say there is very little evidence that Mr Habib was in Egypt. ...What sort of evidence would you expect to find?”</p> <p>Mr Keelty—“I did not say that Mr Habib was in Egypt. The AFP is not in a position to confirm whether Mr Habib was in Egypt. Mr Habib’s own words were that, wherever he was, wherever he had been taken to, the people spoke Egyptian.”</p> <p>Senator Allison—“During the time that Mr Habib is said to have been in Egypt, were you informed of that suggestion?”</p> <p>Mr Keelty—“I am not aware that we were. If I am wrong, I will correct the record.”</p> <p>...</p> <p>Senator Allison—“According to the Attorney-General on the 14<sup>th</sup> of this month, the government asked Egypt if Mr Habib was there, and the Egyptian government said he was not. How did the government come to hear about that? What informed the government as to the likelihood that he was in Egypt?”</p> <p>Senator Ellison—“I think that was answered yesterday by the secretary of the department. ...[A]s to the Australian government and what it did and what it knew, that really is more a whole-of-government answer... The secretary answered that yesterday.”</p>	SL&CLC, p 12
	<p>Senator Allison—“...I have just been reminded that the government wrote to Mr Habib’s wife to indicate that he was in Egypt. Were you aware of that?”</p> <p>Senator Ellison—“I think that is a Foreign Affairs question. That would not be anything to do with the Australian Federal Police; that question should be asked of Foreign Affairs at estimates.”</p>	SL&CLC, p 15
Dennis Richardson	<p>Senator Kirk—“When did ASIO become aware that Mr Habib was no longer in Pakistan?”</p> <p>Mr Richardson—“We formed a view in mid to late November that he was most likely in Egypt, and that was the basis of the Foreign Affairs representation to the Egyptian authorities for consular access to him. We established to our satisfaction that he was definitely there in February 2002.”</p> <p>Senator Kirk—“As I understand it, your information about him most likely being in Egypt in mid to late November came through DFAT rather than through your—“</p> <p>Mr Richardson—“No. It was through our own activities.”</p> <p>Senator Kirk—“So really at this stage, in mid to late November, ASIO was keeping a watching brief on this gentleman. He was not really of any particular interest to you. You were just keeping an eye on him, so to speak.”</p> <p>Mr Richardson—“Mr Habib had been of interest to us for some time. He was even of more interest to us following his presence in Afghanistan before, on and after 11 September 2001.”</p> <p>Senator Kirk—“But after his transfer or travel to Egypt, ASIO still maintained an interest in him?”</p> <p>Mr Richardson—“Yes, most certainly. And we retain an interest in him</p>	SL&CLC, p 31-32

	<p>to this day.”</p> <p>Senator Kirk—“But, as I understand it, it was really for DFAT to concern themselves with matters of his welfare, consular access and the like.”</p> <p>Mr Richardson—“That is right. I think it is on the public record that DFAT made numerous representations to seek access to him from the time we formed a view that he was most likely there.”</p> <p>Senator Kirk—“Which was around February 2002?”</p> <p>Mr Richardson—“No. We formed that view that he was most likely there in mid to late November, and we established to our satisfaction that he was definitely there in February 2002.”</p> <p>Senator Kirk—“When Mr Habib was moved from Pakistan to Egypt, I understand from what you are saying that ASIO was not notified of that by the Pakistani authorities or by the Egyptian authorities.”</p> <p>Mr Richardson—“That is right.”</p> <p>Senator Kirk—“You had to make your own inquiries in order to determine his whereabouts.”</p> <p>Mr Richardson—“That is right.”</p> <p>...</p> <p>Senator Kirk—“Is it fair to say that it was DFAT who first became aware of Mr Habib’s presence in Egypt or was it ASIO?”</p> <p>Mr Richardson—“No, it was ASIO. I think I said in answer to an earlier question that we formed a view in mid to late November that he was most likely in Egypt and that formed the basis of the representations that Foreign Affairs were making to the Egyptian authorities.”</p>	
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## Attachment B

PARLIAMENTARY & COMMITTEE QUESTIONS		
Dept/ Minister	Details of response	Number and date asked
Minister for Foreign Affairs, (Alexander Downer)	Mr Melham—[See questions (14)-(29) concerning Mr Habib and Egypt]. Mr Downer—“In November 2001 the Department became aware that Mr Habib was no longer in Pakistan and that he may have been transferred to Egypt. Between November 2001 and April 2002 numerous representations were made by the Australian Embassy in Cairo to the Egyptian government, including at Prime Ministerial level, seeking confirmation of Mr Habib’s detention in Egypt and consular access to him. Egyptian authorities consistently refused to confirm Mr Habib’s detention or to grant access to him. The Australian Embassy in Islamabad continued to make representations to Pakistani officials seeking information on Mr Habib until mid-January 2002. The Department is aware of media reports that Mr Habib has written to his wife making certain allegations about his treatment in Egypt. Egyptian authorities have refused to confirm that Mr Habib was ever in their custody.”	Senate Question No 635, 19/8/2002
AGD	Senator Greig—“...(i) Was any ASIO officer or any other Australian official aware of the United States’ plans to transfer Mr Habib to Egypt?... (m) Can the Government now confirm that Mr Habib was, in fact, transferred to Egypt for a period of time?” AGD—“...(i) No ASIO officer or any other Australian official was aware of any plans to transfer Mr Habib to Egypt, nor does the Government know who transferred Mr Habib to Egypt. ... (m) Egypt has not acknowledged that it had Mr Habib in its custody.”	Senate Legal & Constitutional Legislation Committee Question No 90, 2/12/2004
AGD	Senator Bolkus—“What inquiries have we made to ascertain whether Mr Habib had been taken to Egypt?” AGD—“The Department of Foreign Affairs and Trade sought consular access to Mr Habib in Egypt in late 2001 and early 2002. Despite repeated inquiries, including at the highest levels, Egyptian authorities never acknowledged Mr Habib was in Egypt.”	SL&CLC Question No 74, 14/2//2005
AFP	Senator Ludwig—“Could you advise whether the AFP had any advice with regard to the date on which the Australian authorities might have been aware that Mr Habib was in Egypt – whether that was relayed to the AFP.” AFP—“The AFP became aware on 19 November 2001 that Mr Habib was no longer in Pakistan and was most likely to be in Egypt.”	SL&CLC Question No 232, 15/2/2005
Attorney-	Mr Melham—“What specific inquiries have been undertaken by	House of



<p>General, (Philip Ruddock)</p>	<p>the ...AFP in respect of allegations that Mr Mamdouh Habib was subjected to torture or inhumane treatment while he was detained in (a) Pakistan, (b) Egypt and (c) United States military custody?" Mr Ruddock—"It is not the AFP's role to monitor the treatment of persons in custody whilst overseas. ...DFAT provides a range of assistance to Australians detained overseas to help ensure their welfare is protected. However, on rare occasions, including in Mr Habib's case, where foreign authorities have not allowed DFAT to conduct consular visits to an Australian detainee, Australian security and law enforcement officials have assisted in providing DFAT with information regarding the detainee's welfare obtained during interviews with the detainee. Any complaints made by Mr Habib to AFP members were forwarded to DFAT."</p>	<p>Representatives Question No 6033, 14/6/2007</p>
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<b>STATEMENTS BY GOVERNMENT MINISTERS</b>		
<b>Minister</b>	<b>Details of statement</b>	<b>Date</b>
Minister for Defence (Robert Hill)	Press conference, Commonwealth Parliamentary Offices, Adelaide—"I understood we knew that he [Habib] was in detention in Pakistan but we didn't know that he was being moved to Egypt. Whilst he was in Egypt we sought access to him and were unsuccessful. I don't think we were even able to obtain confirmation that he was in Egypt. And now that he's been returned, now that he is in US custody they've advised us promptly. ...So whilst in the intervening period it is true we have not been able to get information that we sought in relation to Mr Habib but it's pleasing that now he's in US hands we are able to get that information."	19/2/2002
Attorney-General (Daryl Williams) & Minister for Foreign Affairs (Alexander Downer)	Joint news release—"Mr Habib was arrested in Pakistan in early October. We believe he was subsequently moved to Egypt. Australian officials were not given access to Mr Habib in Egypt."	18/4/2002
Minister for Foreign Affairs (Alexander Downer)	Doorstop interview, Willard Intercontinental Hotel, Washington DC—"...[O]n this question of abuse [to Habib] by the Egyptians, we've raised this with the Egyptians, but you see the Egyptians don't admit to ever having kept Habib in custody. Now we believe they did and of course that's information that's been passed to you. ... The question for me is the question of whether his allegation of abuse while he was in custody in Egypt is a credible allegation, and we've asked the Egyptians for information on that and the response we get from the Egyptians is that they didn't ever have him in custody. Well we, at the time, when we believe he was in Egyptian custody made a lot of representations to the Egyptian government over him."	7/7/2004
Attorney-General (Philip Ruddock)	Doorstop interview, Sydney— "Question—Was any Australian official present when Habib was at the airport facility in Pakistan being relocated to Egypt? Mr Ruddock—Look, we weren't aware of him being relocated. We've made inquiries when we became aware that he may be-- Question—Well, was an Australian official present when he was relocated? Mr Ruddock—Well, I'm not informed of any Australian official being present. What I am aware of is that we sought access to him in Egypt and Egypt denied that he was in their custody. And we made representations at the highest level at that time to obtain consular access to him, and obviously if they denied they had him – which they did	6/1/2005

	<p>– no consular access was achieved.</p> <p>Question—So you’re still saying the Government is not entirely aware of whether or not Mamdouh Habib was ever in Egypt?</p> <p>Mr Ruddock—What we’re saying is that the Egyptians denied that he was in their custody and that was the advice we were given at the time.</p> <p>Question—Did you ever check with Pakistani officials or US officials--</p> <p>Mr Ruddock—Well, obviously we checked with officials but it was in that context we were seeking access from Egypt but that request was met with advice that they didn’t have him.</p>	
Minister for Foreign Affairs (Alexander Downer)	<p>Interview on <i>Sunday</i>—“...the Egyptians have at no time acknowledged that they did actually detain Habib, though we for a long time believe that they did – did detain him...and we know from what Habib said that he was in Egypt, our Ambassador raised his welfare, and the fact that we thought the Egyptians had him with the Egyptian Prime Minister and other ministers and officials.”</p>	13/2/2005
Attorney-General (Philip Ruddock)	<p>Interview on Sky TV News—</p> <p>Reporter—“...Has Australia asked Egypt directly whether – what tactics were used in the interrogation process?</p> <p>Mr Ruddock—Well we’ve asked Egypt whether he was there. And we asked...</p> <p>Reporter—Have you asked them what tactics were used in the interrogation?</p> <p>Mr Ruddock—Well let me answer the question. We asked in Egypt whether he was there, and we asked at the time when we believed he may have been there, and it was specifically denied that he was held in Egypt. Now you say, did I ask how he was treated. They deny he was there.</p> <p>Reporter—Well now you know he was there, have you asked since?</p> <p>Mr Ruddock— I know he claims he was there. I know the Egyptians deny he was there. I have no reason to disbelieve Mr Habib but I do know that we have tested with the Egyptians whether or not he was there because we wanted consular access and they specifically denied it. Now we took it up at the highest level and that’s always been the case. Those matters haven’t changed.”</p>	14/2/2005
Minister for Foreign Affairs (Alexander Downer)	<p>Radio interview with John Laws (2UE)—“... Now there is another question about what happened to him during the months that Habib was in Egypt. The problem we’ve had there, is first of all the Egyptians always denied that they ever had him in their custody. For whatever reasons they did so, and the Egyptians still don’t concede that they did</p>	14/2/2005

	<p>have him in their custody. So bearing that in mind, we are not of course able to find out anything about the way he was treated there.... [F]or all I know he may have been badly treated in Egypt but we don't know because the Egyptians have still not conceded to us that they held him."</p>	
<p>Attorney-General (Philip Ruddock)</p>	<p>Forum on <i>Dateline</i>—  “Reporter—Do you agree that Habib was subject to a process called extraordinary rendition, that he was taken by the United States to Egypt for the purpose of interrogation?  Mr Ruddock—I can't comment on those matters. I have no personal knowledge – we were never advised that he was being removed. We sought – and continued to seek – access to him and sought to find out what had happened to him and where he'd gone.  Reporter—Do you believe that Mamdouh Habib was tortured in Egypt?  Mr Ruddock—I don't know. I hear his claims but I don't know. All I know is that we sought confirmation as to whether he was there and that was never forthcoming but we formed the view that he was.  ...  Mr Ruddock—...[W]e sought from the Egyptians confirmation that he was there. That was denied. And I have no knowledge of whatever claims he [Habib] may make. I've got no knowledge.  ...  Mr Ruddock—...[W]e were seeking access to him [Habib] if he was there [Egypt] – it was never obtained. I think that's the end of the matter. We have no knowledge of him being there. We formed a view he was there.”  ....  Reporter—Why do you think he was taken to Egypt?  Mr Ruddock—I don't know.  Reporter—Have you asked?  Mr Ruddock—It's not a question of have we asked. Who do you ask?  Reporter—The United States?  Mr Ruddock—Well, no, we ask Egypt and Egypt denied he was there.</p>	<p>9/3/2005</p>