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November 7, 2002

Mr. _____

Pennsylvania 18704-5067

Dear Mr. _____,

Thank you for contacting me regarding the International Criminal Court. I appreciate hearing from you and having the benefit of your views.

On July 17, 1998, the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, meeting in Rome, Italy, adopted the "Rome Statute of the International Criminal Court" by a vote of 120 to 7, with 21 countries abstaining. As you may know, the United States voted against final adoption of the Rome Statute because of concerns regarding the potential overreach and abuse of the Court. Although the United States voted against the final adoption of the Rome Statute, U.S. diplomats have continued to meet regularly with representatives from the Preparatory Commission for the International Criminal Court with the hope that the Rome Statute might be amended to alleviate American concerns about the jurisdictional power of the Court. Unfortunately, the United States' proposals for amending the structure of the Court, so as to prevent misuse of the court, have been rebuffed.

During testimony before the Congress in 2000, Ambassador David Scheffer, the lead United States negotiator to this treaty, stated that the United States should not sign the Rome Statute because certain critical negotiating objectives of the United States had not been achieved. In fact, Ambassador Scheffer testified that American concerns included the possible prosecution of individual American soldiers in the line of duty on behalf of the United States. This concern exists even if the United States maintains its refusal to sign the current treaty- According to the Ambassador, multinational peacekeeping forces will be exposed to the International Criminal Court's jurisdiction *even if the country of the individual peacekeeper has not joined the treaty simply because the nation in which the operation occurs is a party to the Rome Statute*. Thus, the treaty establishes an arrangement whereby United States armed forces operating overseas could conceivably be prosecuted by the Court even if the United States has not signed the Rome Statute. Undoubtedly, such possibilities could prevent the United States from using its military to meet North Atlantic Treaty Organization (NATO) obligations and participate in multinational or coalition operations, including humanitarian interventions to save civilian lives.

In order to ensure that American service members are not subject to undue prosecution by an international court in the performance of peacekeeping duties, on November 1, 2001, Senator Jesse Helms of North Carolina introduced S. 1610, the American Servicemembers' Protection Act of 2001. This legislation prevents American troops from participating in a peacekeeping operation authorized by the United Nations Security Council unless the Security Council has permanently exempted United States military personnel from criminal prosecution by the International Criminal Court for actions undertaken in connection with the operation. This legislation does not prevent American troops from participating in these important humanitarian missions, provided our service personnel are accorded judicial protection from an international court that the American government has determined to be detrimental to the interests of international justice.

On December 31, 2000, President Clinton authorized Ambassador David Scheffer to sign the Rome Statute, thereby allowing the United States to participate in the actual organization and make-up of the tribunal. In a statement issued on the Rome Statute, President Clinton said that he would not submit the treaty to the United States Senate for ratification during his final days in office, nor would he recommend that the Bush administration submit the treaty until American concerns regarding protection for American soldiers performing their duty are addressed by significant changes in the structure and rules of the Court. As you may be aware, the Bush administration recently notified United Nations Secretary General Kofi Annan that the Administration does not intend to seek ratification of the treaty and considers the United States to be free of any legal obligations arising from President Clinton's signing of the treaty in December 2000. Furthermore, Secretary of Defense Donald Rumsfeld has indicated that the United States will consider illegitimate any effort by the Court to assert jurisdiction over our military personnel.

While I support the efforts of the United States and the international community to continue negotiations for an international criminal court to prosecute individuals charged with human rights abuses, I do not believe that the United States should become party to any international court which blatantly ignores the jurisdiction of our nation's court system and which invites the abuse of the rights of American military personnel carrying out their lawful duties. I agree with the Bush administration that the current situation provides no meaningful checks on the power of judges and prosecutors at the Court. I will continue to closely follow any developments in the negotiations for a just International Court which will not unduly subject American citizens to international prosecutions for their justified actions in the line of duty.

Thank you again for contacting me. If you wish to discuss this issue further, or if I can assist you with other matters, please do not hesitate to call on me again.

Sincerely,

A handwritten signature in black ink that reads "Rick Santorum". The signature is written in a cursive, flowing style.

Rick Santorum United States Senate

RJS\txs