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Congress of the United States

December 11, 2007

Chair
Select Intelligence Oversight Panel
Committee on Appropriations

Committee on Education
and Labor

Permanent Select Committee
on Intelligence

Committee on Natural Resources

Co-Chair
Children's Environmental Health Caucus
Congressional Research and
Development Caucus

The Honorable Michael B. Mukasey
Attorney General of the United States
Robert F. Kennedy Main Justice Building
Room 5111
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Attorney General Mukasey,

I am writing today to request that you immediately appoint an independent counsel to investigate the circumstances surrounding the destruction by the CIA of video or audio recordings of detainee interrogations and the CIA's representations to the court regarding such recordings.

As I am sure you are aware, the October 25, 2007 declaration filed by U.S. Attorney Charles Rosenberg with Judges Williams and Brinkema already provides a *prima facie* rationale for the appointment of an independent counsel. The CIA clearly misrepresented the facts surrounding the existence—and subsequent destruction—of the recordings in question in their representations to both the federal courts in the Eastern District of Virginia and the Court of Appeals for the Fourth Circuit via the U.S. Attorney's office responsible for handling the prosecution of Zacarias Moussaoui. The CIA made these representations at the very time the Moussaoui case was before Judge Brinkema, and at the time the 9/11 Commission was investigating the circumstances surrounding the attacks on our country by Al Qaeda. To that end, let me quote to you from General Hayden's letter to CIA employees, dated December 6, 2007:

"The press has learned that back in 2002, during the initial stage of our terrorist detention program, CIA videotaped interrogations, and destroyed the tapes in 2005. I understand that the Agency did so only after it was determined they were no longer of intelligence value and not relevant to any internal, legislative, or judicial inquiries—including the trial of Zacarias Moussaoui. The decision to destroy the tapes was made within CIA itself."

General Hayden's statement the tapes were "not relevant to any internal, legislative, or judicial inquiries" is clearly not accurate, as U.S. Attorney Chuck Rosenberg's October 25, 2007 makes clear. The U.S. Attorney clearly recognized that inaccurate—and possibly false—declarations had been made by CIA via his office to two federal courts. Moreover, today's edition of the *New York Times* reports that one or more detainees from Yemen may have been videotaped by the CIA after 2002, further calling into question public declarations by CIA officials about the scope and timeline associated with the CIA's detainee recording activities.

Later in the same letter, General Hayden made the following statement:

"As part of the rigorous review that has defined the detention program, the Office of General Counsel examined the tapes and determined that they showed lawful methods of questioning. The

Office of Inspector General also examined the tapes in 2003 as part of its look at the Agency's detention and interrogation practices."

The fact that neither the CIA General Counsel nor the CIA IG saw fit to order the records preserved raises fundamental questions about how those offices handled this affair, and no CIA entity should have a role in investigating the CIA's conduct in this matter. This is why I found the December 8, 2007 announcement by the Department of Justice (DoJ) that DoJ's National Security Division and the CIA's Inspector General's office were launching a joint inquiry "to determine whether there is sufficient predication to warrant a full investigation" so alarming. It is inappropriate for the CIA to be investigating itself in this matter. This point is particularly pertinent in light of published reports that former White House counsel Harriett Miers urged the CIA to preserve the tapes. If these reports are true, they raise serious questions about what she and other White House and CIA officials knew about the tapes and their disposition during the period in question.

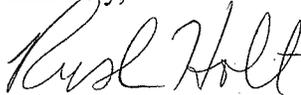
Finally, as the DoJ Office of Legal Counsel (OLC) has been directly involved in the crafting of multiple, and often controversial, legal opinions supporting the Administration's aggressive detainee interrogation policies, it would be unsatisfactory for DoJ to conduct an investigation that may involve DoJ personnel who had a role in shaping legal policies pertaining to the treatment of detainees.

Accordingly, I urge you to immediately appoint an independent counsel to investigate:

- 1) the circumstances surrounding the CIA's creation, handling, destruction, and representations regarding its video or audio recording of detainee interrogations to the federal courts, the 9/11 Commission, and the Congress;
- 2) the legality of the activities contained on the recordings, considering the identity of the detainees involved, the reasons for their detentions, the nature of the information sought, and the methods used in the interrogations;
- 3) who within the executive branch had knowledge of the CIA's destruction of these records, including who authorized their destruction and who was informed of their destruction; and
- 4) whether any federal laws were broken as a result of the CIA's creation, handling, destruction and representations regarding said video or audio recordings of detainee interrogations to the federal courts, the 9/11 Commission, and the Congress.

I am sure you share my concern that this matter be investigated in a fair, nonpartisan, and timely fashion, and I hope you will act favorably on this request immediately.

Sincerely,



RUSH HOLT

Chairman

Select Intelligence Oversight Panel

House Committee on Appropriations