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December 7, 2007

The Honorable Michael Mukasey
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Dear Attorney General Mukasey:

I was troubled to learn that Central Intelligence Agency officials destroyed videotapes of detainees being subjected to so-called "enhanced interrogation techniques." I urge you to investigate whether CIA officials who destroyed these videotapes and withheld information about their existence from official proceedings violated the law.

In a statement yesterday, General Michael Hayden, the CIA director, acknowledged that the tapes were destroyed, stating: "In 2002, during the initial stage of our terrorist detention program, CIA videotaped interrogations, and destroyed the tapes in 2005." *The New York Times* reports that, "The tapes were destroyed in part because officers were concerned that video showing harsh interrogation methods could expose agency officials to legal risks, several officials said."

The CIA apparently withheld information about the existence of these videotapes from official proceedings, including the 9/11 Commission and a federal court. According to Philip Zelikow, the Executive Director of the 9/11 Commission:

The commission did formally request material of this kind from all relevant agencies, and the commission was assured that we had received all the material responsive to our request. ... No tapes were acknowledged or turned over, nor was the commission provided with any transcript prepared from recordings.

CIA attorneys told the federal court hearing the case of Zacarias Moussaoui that videotapes of detainee interrogations did not exist. According to a letter from the U.S. Attorney for the Eastern District of Virginia to Karen Williams, the Chief Judge of the Fourth Circuit Court of Appeals, and Leonie Brinkema, the trial judge in the Moussaoui case:

[T]wo *ex parte* declarations previously submitted by the Central Intelligence Agency ("CIA") in this case contain factual errors concerning whether interrogations of certain enemy combatants were audio or video recorded. ... The fact that audio/video recording of enemy combatant interrogations occurred, and that the United States was in possession of three of those recordings is, as noted, inconsistent with factual assertions in CIA

declarations dated May 9, 2003 (the "May 9 Declaration"), and November 14, 2005 (the "November 14 Declaration").

I note that the obstruction of justice statute, 18 USC 1512(c), states that "whoever corruptly (1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object's integrity or availability for use in an official proceeding; or (2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so, shall be fined under this title or imprisoned not more than 20 years, or both."

CIA Director Hayden asserts that the videotapes were destroyed "in line with the law." However, it is the Justice Department's role to determine whether the law was violated. As Mr. Zelikow said:

The Executive Branch and the Congress need to decide how much they care about this question. If they want to get to the bottom of it, it's pretty easy for people to dig up the relevant records and answer the questions that either officials of the Executive Branch or the Congress could pose.

Please notify me whether you intend to investigate the CIA's destruction of detainee interrogation videotapes. Due to the gravity of this matter, I request that you respond as soon as possible, and in no case later than Wednesday, December 12.

Sincerely,

A handwritten signature in black ink that reads "Dick Durbin". The signature is written in a cursive, slightly slanted style.

Richard J. Durbin