

September 18, 2009

The President
The White House
Washington, D.C.

Dear Mr. President:

We have served as Directors of Central Intelligence or Directors of the CIA for Presidents reaching back over 35 years. We respectfully urge you to exercise your authority to reverse Attorney General Holder's August 24 decision to re-open the criminal investigation of CIA interrogations that took place following the attacks of September 11.

Our reasons for making this recommendation are as follows.

The post-September 11 interrogations for which the Attorney General is opening an inquiry were investigated four years ago by career prosecutors. The CIA, at its own initiative, forwarded fewer than 20 instances where Agency officers appeared to have acted beyond their existing legal authorities. Career prosecutors under the supervision of the US Attorney for the Eastern District of Virginia determined that one prosecution (of a CIA contractor) was warranted. A conviction was later obtained. They determined that prosecutions were not warranted in the other cases. In a number of these cases the CIA subsequently took administrative disciplinary steps against the individuals involved. Attorney General Holder's decision to re-open the criminal investigation creates an atmosphere of continuous jeopardy for those whose cases the Department of Justice had previously declined to prosecute. Moreover, there is no reason to expect that the re-opened criminal investigation will remain narrowly focused.

If criminal investigations closed by career prosecutors during one administration can so easily be reopened at the direction of political appointees in the next, declinations of prosecution will be rendered meaningless. Those men and women who undertake difficult intelligence assignments in the aftermath of an attack such as September 11 must believe there is permanence in the legal rules that govern their actions. They must be free, as the Chairman of the Senate Homeland Security Committee, Senator Lieberman, has put it: "to do their dangerous and critical jobs without worrying that years from now a future Attorney General will authorize a criminal investigation of them for behavior that a previous Attorney General concluded was authorized and legal." Similar deference needs to be shown to fact-based decisions made by career prosecutors years ago.

Not only will some members of the intelligence community be subjected to costly financial and other burdens from what amounts to endless criminal investigations, but this approach will seriously damage the willingness of many other

intelligence officers to take risks to protect the country. In our judgment such risk-taking is vital to success in the long and difficult fight against the terrorists who continue to threaten us.

Success in intelligence often depends on surprise and deception and on creating uncertainty in the mind of an enemy. As President you have the authority to make decisions restricting substantive interrogation or any other intelligence collection method, based on legal analyses and policy recommendations. But, the administration must be mindful that public disclosure about past intelligence operations can only help Al Qaeda elude US intelligence and plan future operations. Disclosures about CIA collection operations have and will continue to make it harder for intelligence officers to maintain the momentum of operations that have saved lives and helped protect America from further attacks.

Finally, another certain result of these reopened investigations is the serious damage done to our intelligence community's ability to obtain the cooperation of foreign intelligence agencies. Foreign services are already greatly concerned about the United States' inability to maintain any secrets. They rightly fear that, through these additional investigations and the court proceedings that could follow, terrorists may learn how other countries came to our assistance in a time of peril. The United States promised these foreign countries that their cooperation would never be disclosed. As a result of the zeal on the part of some to uncover every action taken in the post-9/11 period, many countries may decide that they can no longer safely share intelligence or cooperate with us on future counter-terrorist operations. They simply cannot rely on our promises of secrecy.

We support your stated commitment, Mr. President, to look to the future regarding these important issues. In our judgment the only way that is possible is if the criminal investigation of these interrogations that Attorney General Holder has re-opened is now re-closed.

Sincerely,

Michael Hayden
Porter Goss
George Tenet
John Deutch
R. James Woolsey
William Webster
James R. Schlesinger