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ONE HUNDRED NINTH CONGRESS

Congress of the United States

House of Representatives

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SUBCOMMITTEE ON NATIONAL SECURITY, EMERGING THREATS, AND INTERNATIONAL RELATIONS

Christopher Shays, Connecticut
Chairman
Room 3-222-Rayburn Building
Washington, D.C. 20515
Tel: 202 225-2548
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March 6, 2006

The Honorable Peter Hoekstra, Chairman
The Honorable Jane Harman, Ranking Minority Member
Permanent Select Committee on Intelligence
U.S. House of Representatives
Washington, DC 20515-6415

Dear Chairman Hoekstra and Ranking Minority Member Harman:

We are writing to inquire about whether your Committee intends to investigate claims by an NSA employee, Russ Tice, of potential unconstitutional activity ongoing at NSA. If you are not, we may exercise our Committee's jurisdiction to do so.

Mr. Tice testified before our committee at a February 14 hearing on national security whistleblowers. At that hearing, he stated that he had worked on certain "black world operations and programs" at NSA. He testified that "some of the programs that I worked on, I believe, touched on illegalities and unconstitutional activities."

Since our hearing was conducted in open session, Mr. Tice declined to provide additional details. Mr. Tice did say, however, that he sent a letter to you on December 16, 2005, seeking to disclose his allegations in a classified setting. He also reported that the NSA prohibited him from doing so. He

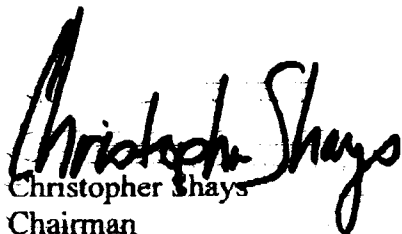
testified that the NSA sent a letter on January 9, 2006, stating that "neither the staff nor members of the HPSCI or SSCI are cleared to receive the information" Mr. Tice wanted to provide.

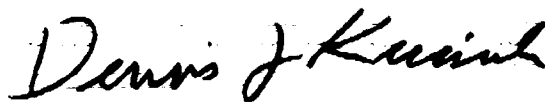
Based on our further discussions with NSA, it appears that the Special Access Programs (SAPs) in which Mr. Tice was involved were Defense Department SAPs under the jurisdiction of the House Armed Services Committee.

Specifically, we would like to learn how you intend to proceed. Do you plan to follow-up with NSA on this issue to confirm the jurisdiction of these SAPs? If this case is indeed within the jurisdiction of the Armed Services Committee, will you refer Mr. Tice's case to that committee for further investigation? And finally, do you plan to interview Mr. Tice to determine whether your committee may have jurisdiction over any of his claims?

The allegations made by Mr. Tice are very serious. Although there has been much attention recently on the secret NSA wiretapping program, Mr. Tice alleges additional unconstitutional activity completely separate from this program. We plan to investigate his claims as thoroughly as possible, but we would appreciate your input by March 10, 2006, before we proceed further.

Sincerely,


Christopher Shays
Chairman


Dennis Kucinich
Ranking Minority Member

cc: Hon. Tom Davis
Hon. Henry Waxman
Hon. Kenny Marchant

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May 17, 2006

Lieutenant General Keith B. Alexander, USA
National Security Agency Director
9800 Savage Road
Fort George G. Meade, MD 20755-6248

Dear General Alexander:

We are writing regarding claims by a National Security Agency (NSA) employee, Mr. Russ Tice, of potential unconstitutional and illegal activity ongoing at NSA.

As you may know, Mr. Tice testified before our Subcommittee at a February 14, 2006, hearing on national security whistleblowers. At that hearing, he stated that he had worked on certain "black world operations and programs" at NSA. He then testified: "some of the programs that I worked on, I believe, touched on illegalities and unconstitutional activities."

Since our hearing was conducted in open session, Mr. Tice declined to provide additional details. Mr. Tice did say, however, that he sent a letter to the House Permanent Select Committee on Intelligence (HPSCI) on December 16, 2005, seeking to disclose his allegations in a classified setting. He also reported that the NSA prohibited him from doing so. He testified that the NSA sent a letter on January 9, 2006, stating that "neither the staff

nor members of the HPSCI or SSCI are cleared to receive the information” Mr. Tice wanted to provide.

We wrote to the Chairman and Ranking Minority Member of HPSCI regarding this matter. Mr. Tice has since informed us, however, that he met with HPSCI staff, and they informed him that, in fact, they were not cleared to hear the information he wanted to provide. They also informed him that the Special Access Program (SAP) Mr. Tice was involved in was not under the jurisdiction of HPSCI, but instead is a Defense Department SAP under the jurisdiction of the House Armed Services Committee.

Under the rules of the House, the Government Reform Committee has broad oversight jurisdiction. Under House Rule X(3)(e), the Committee “shall review and study on a continuing basis the operation of Government activities at all levels with a view to determining their economy and efficiency.” Additionally, House Rule X(4)(c)(2) provides: “the Committee on Government Reform may at any time conduct investigations of any matter without regard to clause 1, 2, 3, or this clause conferring jurisdiction over the matter to another standing committee” and “the findings and recommendations of the Committee in such an investigation shall be made available to any other standing committee having jurisdiction over the matter involved.”

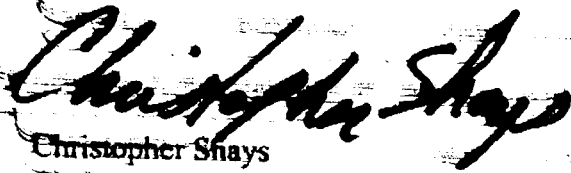
Under the House rules, there is only one limitation on the oversight jurisdiction of the Government Reform Committee. House Rule X(3)(m) provides that HPSCI “shall review and study on an exclusive basis the sources and methods of entities described in clause 11(b)(1)(A).” These include the “Central Intelligence Agency, the Director of Central Intelligence, and the National Foreign Intelligence Program as defined in section 3(6) of the National Security Act of 1947.”

The application of these rules to the SAP Mr. Tice was involved in is clear. If the SAP does not fall under the exclusive jurisdiction of HPSCI, but rather under the jurisdiction of the Armed Services Committee, the House rules provide that the Government Reform Committee may exercise oversight jurisdiction to investigate allegations of illegal activity under that government program.

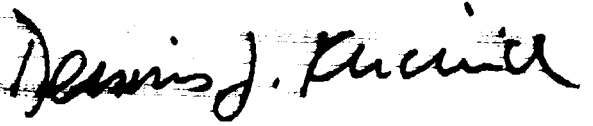
Based on the information set forth above, we are now considering initiating the process to issue an invitation or subpoena to Mr. Tice to

provide testimony to our Subcommittee regarding his allegations. Before doing so, however, we request a more complete legal analysis from NSA on the basis for its objections, if any, to the Subcommittee proceeding in the manner proposed. We request that you provide this analysis by May 26, 2006.

Sincerely,



Christopher Shays
Chairman



Dennis Kucinich
Ranking Minority Member

cc: Hon. Tom Davis
Hon. Henry Waxman
Hon. Kenny Marchant



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OFFICE OF THE UNDER SECRETARY OF DEFENSE
3000 DEFENSE PENTAGON
WASHINGTON, DC 20301 2000

June 21, 2006

Mr. Robert [REDACTED]
Staff Director
Committee on Armed Services
United States House of Representatives
Washington, DC 20515-6035

Dear Mr. [REDACTED]

I received your letter regarding Mr. Russell Tice, a former Department of Defense (Department) employee. Mr. Tice believes he has information concerning possible unlawful and unconstitutional activities conducted within DoD Special Access Programs (SAPs) to which he had access. Mr. Tice has not made the nature of his allegations known to the Department. Mr. Tice has previously raised concerns about unspecified SAPs publicly. The Department is unaware of the nature of these allegations also, despite efforts to engage Mr. Tice directly.

In light of Mr. Tice's allegations and the Department's desire to address concerns regarding our Special Access Programs, I am informing you that I have waived the Non-Disclosure Agreements which apply to the unspecified SAPs about which Mr. Tice has concerns. This waiver is solely for the purposes of his discussion with you and Ms. [REDACTED] or your principals, Congressmen Hunter and Skelton, and strictly with respect to DoD-originated and/or -classified information contained within these SAPs. I have determined that you should have access to this information.

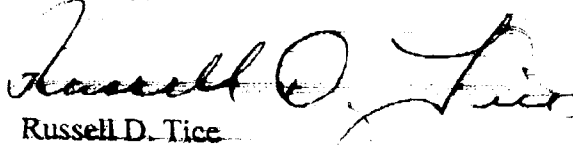
To the extent that Mr. Tice raises concerns about these SAPs, I request that you inform me of the concerns raised. This will enable the Department to begin a full and complete analysis of the concerns and effect an investigation by an appropriate entity, if necessary. If you create a written report resulting from your meeting with Mr. Tice, I request the opportunity to review the report for OPSEC and security purposes.

The Department has previously provided to you a list of all DoD SAPs for which Mr. Tice was cleared. It should be made clear to Mr. Tice

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~~For your own enlightenment, I suggest that you read The Constitution of the United States as well as the Intelligence Community Whistle-blower Protection Act (ICWPA) to educate yourself as to the limitations placed on military officers in relation to their roles with the executive and legislative branches of government.~~

Sincerely,



Russell D. Tice

Former Intelligence Analyst & Capabilities Action Officer,
~~Information Warfare Support Center (IWSC),~~
National Security Agency

~~Staff Director~~

~~Committee on Armed Services
United States House of Representatives
Washington, DC 20515-6035~~

~~Dear Mr. [REDACTED]~~

~~I received your letter regarding Mr. Russell Tice, a former Department of Defense (Department) employee. Mr. Tice believes he has information concerning possible unlawful and unconstitutional activities conducted within DoD Special Access Programs (SAPs) to which he had access. Mr. Tice has not made the nature of his allegations known to the Department. Mr. Tice has previously raised concerns about unspecified SAPs publicly. The Department is unaware of the nature of these allegations also, despite efforts to engage Mr. Tice directly.~~

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~~To the extent that Mr. Tice raises concerns about these SAPs, I request that you inform me of the concerns raised. This will enable the Department to begin a full and complete analysis of the concerns and effect an investigation by an appropriate entity, if necessary. If you create a written report resulting from your meeting with Mr. Tice, I request the opportunity to review the report for OPSEC and security purposes.~~

~~The Department has previously provided to you a list of all DoD SAPs for which Mr. Tice was cleared. It should be made clear to Mr. Tice~~

that this limited and temporary waiver of his Non-Disclosure Agreements is for the sole purpose of meeting with the IIASC personnel identified above in an appropriately cleared facility.

If I may be of further assistance please do not hesitate to contact me at

[REDACTED]

Paul G. Schafer

Paul G. Schafer, Brig Gen, USAF
Director, Special Programs
OUSD(AT&L)

cc: Ms. [REDACTED]
Minority Staff Director

Brigadier General Paul G. Schafer, USAF
Office of the Undersecretary of Defense-AT&L
3000 Defense Pentagon
Pentagon, Room 3D1064
Washington, D.C. 20301-3000

23 JUN '06

Dear Brigadier General Schafer,

~~In reference to your letter to the staff director of the House of Representative's~~
Armed Services Committee (HASC), dated 21 JUN '06, concerning my request to
discuss ~~unlawful activity within Special Access Programs (SAPs)~~, which you and I
more commonly refer to as "Black World" programs and operations; I find it very
intriguing that Congress would need to receive permission from a one star general in
order for ~~them to conduct their constitutional role of oversight~~. In the original letter
that I sent to the HASC, I requested assurance from the chairman that the individuals I
~~speak with and the facility used were cleared and accredited for SAPs~~. When I was
shown your letter, in place of what I requested, I seriously considered refusing to
discuss my concerns with the two lead staffers for the HASC.

~~In regard to your comment that I have not made my concerns about these~~
programs and operations known to the Department of Defense (DoD), I would like to
~~remind you that bringing concerns to the DoD and NSA in the past resulted in my~~
being retaliated against with false, trumped-up allegations designed to trigger the
revocation of my security clearances, and the termination of my employment. While
~~working within these SAPs, I repeatedly attempted to bring up concerns of impropriety~~
which resulted in my being ignored, excluded from key meetings, and sections of my
written reports highlighting questionable conduct being deleted from official after-
~~action documentation~~. ~~To put it frankly General, you and the DoD have proven~~
yourselves untrustworthy to conduct objective investigations of the SAP programs that
you and the Intelligence Community oversee.

Finally, I would like to address your warning to me in the letter you sent to the
HASC which states that "it should be made clear to Mr. Tice that this limited and
~~temporary waiver of his Non-Disclosure Agreement is for the sole purpose of meeting~~
with the HASC personnel identified....." I am well aware of the provisions in my
security agreement and do not need you to remind me of anything. I likewise do not
~~require your permission to discuss my concerns with Congress~~. I am no longer an
employee of the DoD, which renders your and NSA's directions to me
inconsequential. I have informed numerous congressional committees that I will
~~discuss these SAP programs with them, in detail, as long as their chairpersons assure~~
me they have a need to know in their role of providing constitutional oversight.