



F-08-00531

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9 December 2007

2007 DEC 10 AM 7:09

VIA FACSIMILE AND MAIL

Scott A. Koch
Central Intelligence Agency
Information and Privacy Coordinator
Washington, D.C. 20505

Re: FOIA Request – Destruction of Interrogation Video Tapes

Dear Mr. Koch:

This is a request on behalf of The James Madison Project under the Freedom of Information Act, 5 U.S.C. § 552, et seq., for copies of any and all:

- (a) records pertaining to the 2005 destruction of videotapes of the interrogations of Zayn Abidin Muhammed Hussein Abu Zubaida (a/k/a Abu Zubaydah) and Abd al-Rahim al-Nashiri – please refer to the enclosed newspaper articles for spelling variations;
- (b) records, including correspondence, created after September 11, 2001, with Members of Congress or its Committees, The 9/11 Commission (“National Commission on Terrorist Attacks Upon the United States”) or the Department of Justice about (1) the existence of videotapes of interrogations of terrorist suspects; (2) requests for access to videotapes of interrogations of terrorist suspect; (3) warnings or instructions not to destroy any videotapes of interrogations of terrorist suspect; and/or (4) any investigation into your Agency’s destruction of the tapes identified in (a);

“Knowledge will forever govern ignorance, and a people who mean to be their own Governors, must arm themselves with the power knowledge gives.”

James Madison, 1822

The James Madison Project

- (c) records of interrogatory or document production requests, or any records discussing CIA responses thereto, received as part of any criminal prosecutions that sought acknowledgment of the existence and/or copies of videotape interrogations of terrorist suspects since September 11, 2001;
- (d) records of Freedom of Information Act requests received by your Agency after September 11, 2001, for copies of any records pertaining to videotape interrogations of terrorist suspects; and
- (e) records pertaining to (a) that specifically reflect the identity of the attorney within your Agency's Office of General Counsel who approved the destruction of the videotapes and any records setting forth the policy or legal analysis underlying that conclusion.

You are specifically directed to ensure that searches are conducted of the Office of General Counsel, Office of Inspector General, Office of Legislative Affairs, and the National Clandestine Service.

We are hereby requesting a waiver of all fees. The James Madison Project is a non-profit organization under the laws of the District of Columbia and has the ability to disseminate information on a wide scale. Stories concerning our activities have received prominent mention in many publications including, but not limited to, *The Washington Post*, *The Washington Times*, *St. Petersburg Tribune*, *San Diego Union Tribune*, *European Stars & Stripes*, *Christian Science Monitor*, *U.S. News and World Report*, *Mother Jones* and *Salon Magazine*. Our website, where much of the information received through our FOIA requests is or will be posted for all to review, can be accessed at <http://www.jamesmadisonproject.org>. Prior requests submitted by our organization have all received fee waivers.

We are also asking for expedited processing. The 1996 amendments to the Freedom of Information Act permit expedited processing when a "compelling need" exists. See 5 U.S.C. § 552 (a)(6)(E)(v). Specifically, "compelling need" means "with respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity." *Id.* at § 552 (a)(6)(E)(v)(II). The CIA has adopted internal regulations governing expedited processing and has determined that a "compelling need" is deemed to exist where the "request is made by a person primarily engaged in disseminating information and the

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information is relevant to a subject of public urgency concerning an actual or alleged Federal government activity." See 32 C.F.R. § 1900.34(c)(2).

There can be no question that the information sought would contribute to the public's understanding of government operations or activities and is in the public interest. Over the course of the Global War on Terror ("GWOT"), numerous documents from a host of executive branch agencies have been released, detailing the legal and policy considerations that have formed the basis for discussions on a wide-range of national security policies. One example was the DOJ's disclosure of memoranda that originated in its Office of Legal Counsel and which formed a critical component of U.S. policies concerning detention of terrorist suspects. Given the highly-publicized nature of this particular controversy and its relation to the ongoing dispute over the CIA's "enhanced interrogation techniques", such as water boarding, detailing the span of arguments considered prior to the decision to destroy the tapes and the investigation afterwards will clearly contribute to the public's understanding of government operations or activities.

With respect to expedited processing, as explained above, JMP has been and continues to be primarily engaged in disseminating information on a wide scale and clearly falls within the scope of the statute. A "compelling need" exists due to the critically important political and legal questions that are clearly implicated by the decision to authorize the destruction of these tapes. As has been noted in numerous press reports the CIA claims that the tapes were destroyed because "they were no longer of intelligence value and not relevant to any internal, legislative or judicial inquiries." This conclusion has been disputed by several Members and staff of the 9/11 Commission to include its Co-Chairman Lee Hamilton, its General Counsel Daniel Marcus and its Executive Director Philip Zelikow, all of whom have publicly stated that the tapes would have been relevant and applicable to the Commission's request for materials and that withholding evidence being sought in a fact-finding investigation might have constituted obstruction of justice. The CIA statements have also been challenged by various Members of Congress.

Moreover, the tapes were potentially responsive to at least one court discovery order set down on November 3, 2005 by U.S. District Court Judge Leonie Brinkema in the trial of Zacarias Moussaoui; that order sought confirmation of the existence or non-existence of "video or audio tapes" of Al-Qaeda detainees in U.S. custody and the government denied that it had video or audio tapes of the interrogations. Not only does the destruction of the tapes have the potential to serve, either by appearance or in reality, as evidence of inappropriate or unlawful efforts by the CIA to destroy evidence, but it also raises the

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possibility of whether the CIA and its officials, particularly those within its Office of General Counsel, knowingly and willingly obstructed justice. It goes without saying that potential criminal actions by the CIA and its officials are "relevant to a subject of public urgency" and therefore satisfy the "compelling need" standard.

The Department of Justice and the CIA's Office of Inspector General have already opened separate inquiries into the destruction of the tapes, and Congressional hearings are likely on the subject as well.

I have enclosed numerous copies of news articles and editorials from *The New York Times*, *The Washington Post*, *Los Angeles Times* and other publications, as well as a list of selected newspaper articles – just as an example – demonstrating the wide-spread world-wide interest in the topic. The topic has, of course, also widely been discussed by television news programs and commentators as well as rampantly throughout the Internet.

The CIA is required by law to respond to this request within 20 working days. However, the CIA is required to issue a determination on the request for expedited processing "within 10 days after the date of the request." 5 U.S.C. § 552 (a)(6)(E)(ii)(I). Therefore, the CIA's response is due on or before December 20, 2007. Failure to timely comply or issue a favorable decision will result in the filing of a civil action against your agency in the United States District Court for the District of Columbia. Please note that the denial of expedited processing should not interfere with the normal processing of these requests.

If you deny all or part of this request, please cite the specific exemptions you believe justifies your refusal to release the information or permit the review and notify us of your appeal procedures available under the law. In excising material, please "black out" rather than "white out" or "cut out".

Your cooperation in this matter would be appreciated. If you wish to discuss this request, please do not hesitate to contact me at either (202) 498-0011 or my law office at (202) 454-2809.

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Finally, please have all return correspondence addressed specifically to my attention to ensure proper delivery.

Sincerely,

A large, irregular white box redacts the signature of Mark S. Zaid. The box is roughly rectangular with a pointed top-right corner and a pointed bottom-right corner.

Mark S. Zaid
Executive Director

Enclosures

"Knowledge will forever govern ignorance, and a people who mean to be their own Governors, must arm themselves with the power knowledge gives."

James Madison, 1822

CIA Destroyed Videos Showing Interrogations; Harsh Techniques Seen in 2002 Tapes The Washington Post December 7, 2007 Friday

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The Washington Post

December 7, 2007-Friday
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SECTION: A-SECTION; Pg. A01

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HEADLINE: CIA Destroyed Videos Showing Interrogations;
Harsh Techniques Seen in 2002 Tapes

BYLINE: Dan Eggen and Joby Warrick; Washington Post Staff Writers

BODY:

The CIA made videotapes in 2002 of its officers administering harsh interrogation techniques to two al-Qaeda suspects but destroyed the tapes three years later, CIA Director Michael V. Hayden said yesterday.

Captured on tape were interrogations of Abu Zubaydah, a close associate of Osama bin Laden, and a second high-level al-Qaeda member who was not identified, according to two intelligence officials. Zubaydah has been identified by U.S. officials familiar with the interrogations as one of three al-Qaeda suspects who were subjected to "waterboarding," a technique that simulates drowning, while in CIA custody.

The tapes were made to document any confessions the two men might make and to serve as an internal check on how the interrogations were conducted, senior intelligence officials said.

All the tapes were destroyed in November 2005 on the order of Jose A. Rodriguez Jr., then the CIA's director of clandestine operations, officials said. The destruction came after the Justice Department had told a federal judge in the case of al-Qaeda operative Zacarias Moussaoui that the CIA did not possess videotapes of a specific set of interrogations sought by his attorneys. A CIA spokesman said yesterday that the request would not have covered the destroyed tapes.

The tapes also were not provided to the Sept. 11 commission, the independent panel that investigated the 2001 terrorist attacks on the World Trade Center and the Pentagon, which demanded a wide array of material and relied heavily on classified interrogation transcripts in piecing together its narrative of events.

The startling disclosures came on the same day that House and Senate negotiators reached an agreement on legislation that would prohibit the use of waterboarding and other harsh interrogation tactics by the CIA and bring intelligence agencies in line with rules followed by the U.S. military.

The measure, which needs approval from the full House and Senate, would effectively set a government-wide standard for legal interrogations by explicitly outlawing the use of simulated drowning, forced nudity, hooding, military dogs and other harsh tactics against prisoners by any U.S. intelligence agency.

The proposed ban sets the stage for a potential election-season standoff between congressional Democrats and the Bush administration, which has fought vigorously on Capitol Hill and in the courts to preserve intelligence agencies' ability to use aggressive interrogation techniques against terrorism suspects.

White House spokesman Tony Fratto warned that the administration had threatened to veto similar legislation proposed in the House.

CIA Destroyed Videos Showing Interrogations; Harsh Techniques Seen in 2002 Tapes The Washington Post December 7, 2007 Friday

In a note to agency employees yesterday, Hayden said that the decision to destroy the videotapes was made to protect the identities of CIA officers who were clearly identifiable on them.

"Beyond their lack of intelligence value -- as the interrogation sessions had already been exhaustively detailed in written channels -- and the absence of any legal or internal reason to keep them, the tapes posed a security risk," Hayden said. "Were they ever to leak, they would permit identification of your CIA colleagues who had served in the program, exposing them to and their families to retaliation from al-Qaeda and its sympathizers."

Hayden said he decided to discuss the tapes publicly because of news media interest and the possibility that "we may see misinterpretations of the facts in the days ahead." The New York Times said on its Web site that it had informed the CIA on Wednesday night that it was preparing a story about the destroyed tapes.

Agency officials declined to describe the contents of the tapes, but knowledgeable U.S. officials said they depicted hours of interrogations of the two men, both of whom were subjected to aggressive interrogation methods. Whether the tapes show waterboarding or any other specific techniques is not clear.

The existence of the tapes was revealed to congressional oversight committees, and Congress was also informed about the decision to destroy the tapes, two senior intelligence officials said. The CIA was headed by former GOP congressman Porter J. Goss at the time.

But Sen. John D. Rockefeller IV (D-W.Va.), chairman of the Senate intelligence committee, said in a statement last night that lawmakers did not learn about the destruction of the tapes for another year.

"While we were provided with very limited information about the existence of the tapes, we were not consulted on their usage nor the decision to destroy the tapes," Rockefeller said.

Civil liberties advocates denounced the CIA's decision to destroy the tapes, saying the agency should have known by 2005 that the actions depicted on them were potentially the subject of litigation and congressional investigations.

Jameel Jaffer, a national security lawyer at the American Civil Liberties Union, said the tapes were destroyed at a time when a federal court had ordered the CIA to comply with a Freedom of Information Act request by the ACLU seeking records related to interrogations.

"The CIA appears to have deliberately destroyed evidence that would have allowed its agents to be held accountable for the torture of prisoners," Jaffer said. "They are tapes that should have been released to the courts and Congress, but the CIA apparently believes that its agents are above the law."

Whether the agency faces potential legal jeopardy depends on timing -- specifically, whether investigations into the interrogation practices had been launched when the tapes were destroyed, said A. John Radsan, a former federal prosecutor and CIA assistant general counsel.

"Once an investigation has begun -- whether it's an attorney general or an inspector general investigation -- it's much more problematic to have destroyed any kinds of documents or tapes that fall within the scope of the investigation," Radsan said.

U.S. District Judge Leonie M. Brinkema of Alexandria ordered the CIA in 2003 to turn over tapes of terrorists whose testimony might be relevant to Moussaoui's defense. Moussaoui briefly trained to become one of the hijackers in the Sept. 11 attacks but was taken into custody before they occurred.

The Justice Department revealed in a letter to Brinkema and an appeals court judge in October that the CIA's previous claims had been wrong and that it had found two videotapes and one audiotape of unidentified detainee interrogations. Those tapes still exist, prosecutors said in a court filing.

CIA spokesman Mark Mansfield said the tapes acknowledged by Hayden "did not involve anyone judged relevant by the court in the Moussaoui proceedings."

Mansfield also said that the CIA did not withhold evidence from the Sept. 11 commission, contending that its members did not ask specifically for tapes. "The tapes were destroyed only when it was determined that they were no longer of intelligence value and not relevant to any internal, legislative or judicial inquiries," he said.

Zubaydah was captured in March 2002, becoming the first of the "high-value" detainees in CIA custody and the first to be subjected to harsh interrogation methods, which included sleep deprivation as well as waterboarding. Zubay-

CIA Destroyed Videos Showing Interrogations; Harsh Techniques Seen in 2002 Tapes The Washington Post December 7, 2007 Friday

dah, who was shot and gravely wounded during his capture, later became "defiant and evasive," according to Hayden, leading to the decision to apply more aggressive measures.

Hayden said the methods shown on the videotapes were legal under guidelines approved by the Justice Department and the Bush administration, and he said the interrogation provided "crucial information."

Intelligence officials have acknowledged that the CIA used waterboarding on three prisoners after the 2001 attacks but say the agency stopped the practice in 2003. The technique was revived as a political issue in recent months during the confirmation process for Attorney General Michael B. Mukasey, who refused to say whether waterboarding is considered torture under U.S. law. Most Senate Democrats voted against his nomination as a result, giving Mukasey the lowest level of Senate support of any attorney general in the past half-century.

The waterboarding ban was added to the 2008 intelligence authorization bill through an amendment offered by one of the few Democrats to support Mukasey, Sen. Dianne Feinstein (D-Calif.). Under the amendment, no prisoner in U.S. custody "shall be subject to any treatment or technique of interrogation not authorized by the United States Army Field Manual."

The Army field manual on interrogations was amended last year to explicitly prohibit eight aggressive and controversial interrogation tactics, including some methods used on military prisoners at the Abu Ghraib detention facility in Iraq and the military prison at Guantanamo Bay, Cuba. The manual also singles out the use of waterboarding.

"The national debate over torture will end if this amendment to place the CIA under the Army Field Manual becomes law," Feinstein said in a statement.

But Sen. Christopher S. Bond (R-Mo.) accused Democrats of trying "to kill an important tool in our efforts to fight terror."

Staff writer Walter Pincus and staff researcher Julie Tate contributed to this report.

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The Washington Post

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The Washington Post

December 8, 2007 Saturday
Regional Edition

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HEADLINE: The Torture Tapes;
The CIA may have destroyed evidence of crimes.

BODY:

WHEN IT destroyed at least two videotapes of the interrogation of captured al-Qaeda operatives, the Central Intelligence Agency may have eliminated evidence of criminal activity. Abu Zubaida, one of the two detainees whose questioning was taped, is known to have been subjected to waterboarding. The United States has prosecuted as criminals practitioners of that ancient torture technique for more than a century. Political appointees in the Justice Department prepared a notoriously twisted brief in 2002 justifying this barbaric practice as legal. But by 2005, when the tapes were destroyed, the White House had been forced to repudiate that "torture memo" and the CIA had stopped waterboarding under pressure from Congress. At the time, multiple investigations of the illegal abuse of prisoners were underway.

In that context, CIA Director Michael V. Hayden's assertion that the tapes were purged because of concerns they would leak and be used by al-Qaeda to track down interrogators is not credible. The CIA is skilled at keeping secrets and protecting agents without destroying valuable material. It is far more plausible that CIA officials eliminated evidence that could have been used to hold interrogators accountable for illegal acts of torture -- as well as the more senior administration officials who ordered or approved those acts.

Gen. Hayden's account of the tapes, which apparently was hastily prepared after the New York Times inquired about them, also asserts that top congressional leaders and committees were informed of the tapes' existence and of the decision to destroy them. This was quickly contradicted by a parade of Republicans and Democrats who said they were not told about the tapes' destruction in advance. Rep. Jane Harman (D-Calif.) said she warned in a 2003 letter against the destruction of any videotapes. The executive director of the Sept. 11 commission said it asked the CIA for such material in 2004 but did not receive it.

Congress has already immunized CIA staffers for the acts of torture they may have committed against al-Qaeda prisoners. But destruction of the evidence could still be a crime. Sen. John D. Rockefeller IV (D-W.Va.) said Thursday that the Senate intelligence committee he chairs has asked "for a complete and accurate chronology of events related to the tapes, including how the tapes were used, when and why they were destroyed, who was notified of their destruction and when, and any communication about them that was provided to the courts and Congress." Attorney General Michael B. Mukasey, who promised Congress he would uphold the law in just this sort of case, should order a criminal inquiry by the Justice Department.

In the meantime Congress must act to ensure that the CIA will no longer practice torture. On Wednesday a conference committee approved an amendment to an intelligence funding bill that would require that the recently revised Army interrogation manual, which bans waterboarding and other torture methods, apply to detainees held by U.S. intelligence agencies. Many senior military commanders -- including, most recently, Gen. David H. Petraeus -- have said that the techniques in the manual have proven effective in obtaining intelligence and that harsher methods are counterproductive. Senators who have trumpeted their faith in Gen. Petraeus's judgment in Iraq should listen to this counsel as well.

The Washington Post

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The Washington Post

December 8, 2007 Saturday
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HEADLINE: Inquiry Sought On CIA Tapes;
Destruction Is Said To Be News to Bush

BYLINE: Dan Eggen and Joby Warrick; Washington Post Staff Writers

BODY:

Democratic lawmakers yesterday angrily demanded a Justice Department investigation into the CIA's decision to destroy videotapes of harsh interrogation tactics used on two terrorism suspects.

The White House said that President Bush was unaware of the tapes or their destruction until this week, but administration sources acknowledged last night that longtime Bush aide Harriet E. Miers knew of the tapes' existence and told CIA officials that she opposed their destruction.

The Senate intelligence committee also announced the start of its own probe into the destroyed videotapes, said Chairman John D. Rockefeller IV (D-W.Va.).

"We do not know if there was intent to obstruct justice, an attempt to prevent congressional scrutiny, or whether they were simply destroyed out of concern they could be leaked," Rockefeller said. "Whatever the intent, we must get to the bottom of it."

The uproar in Congress followed Thursday's disclosure by CIA Director Michael V. Hayden that the agency had videotaped the interrogations of two al-Qaeda suspects in 2002 and destroyed the tapes three years later. Hayden and other officials said one of the detainees was Abu Zubaida, a close associate of Osama bin Laden.

The other was identified last night by a knowledgeable U.S. official as Abd al-Rahim al-Nashiri, who was captured in November 2002 in the United Arab Emirates. Nashiri complained earlier this year, in documents filed for his military tribunal hearing at Guantanamo Bay, Cuba, that he had been tortured into confessing to various terrorist acts and plots. Several alleged acts of torture are redacted from the document.

It is not clear which tactics are shown on the videotapes. Abu Zubaida has been identified by intelligence officials as one of three detainees subjected to waterboarding, an aggressive interrogation technique that simulates drowning.

Hayden said in a letter to CIA personnel that the decision to destroy the tapes was made out of concern that interrogators could be identified if the tapes were leaked.

But Democratic lawmakers, defense lawyers and civil liberties advocates scoffed at that explanation yesterday, arguing that the disclosure suggested an attempt by the CIA to cover up possibly illegal conduct in the face of specific requests for records, including video or audio tapes, from federal courts and from the independent commission that investigated the Sept. 11 attacks.

Senate Majority Whip Richard J. Durbin (D-Ill.) urged Attorney General Michael B. Mukasey in a letter yesterday to investigate "whether CIA officials who destroyed these videotapes and withheld information about their existence from official proceedings violated the law."

Justice spokesman Dean Boyd said the department was reviewing Durbin's request but had no other comment.

Sen. Carl M. Levin (D-Mich.) called Hayden's reasoning a "pathetic excuse" and said, "You'd have to burn every other document at the CIA that has the identity of an agent on it under that theory."

Democrats and the administration also clashed over the extent of briefings provided to Congress about the tapes.

The CIA says the Senate intelligence committee, for example, was first told of plans to destroy the tapes in February 2003 and was then informed during a closed hearing in November 2006 that the destruction had been carried out.

But Rockefeller said his panel "has located no record of either being informed of the 2003 CIA decision or being notified late last year of the tapes having being destroyed." A review of a transcript of the November 2006 hearing also makes no mention of destroying tapes, Rockefeller said.

On the House side, Rep. Jane Harman (Calif.), who was previously the ranking Democrat on the House intelligence committee, said she warned the CIA's general counsel after a classified briefing in 2003 not to destroy any videotapes related to the agency's "enhanced interrogation program."

CIA officials said the agency never turned over the videotapes to the Sept. 11 commission because the panel did not specifically request them. But several members and staffers, including the panel's Republican co-chairman, disputed that claim yesterday and said the CIA's failure to disclose the tapes was in defiance of commission demands.

"That just doesn't hold water, because we asked for everything," said former New Jersey governor Thomas H. Kean, who was the panel's co-chairman. "They told us we had everything they had on the detainees. . . . You don't expect not to be told the truth, but we weren't told the truth."

The panel's former general counsel, Daniel Marcus, said CIA representatives told the commission that videotapes and interrogation transcripts did not exist for detainees linked to the 2001 attacks.

White House press secretary Dana Perino told reporters that Bush "has no recollection of being made aware of the tapes or their destruction" before he was briefed on the issue by Hayden on Thursday.

Perino said she could not rule out other White House involvement in the decision because she had asked only the president about it. The CIA is reviewing the case with help from White House lawyers, she said.

Miers was White House deputy chief of staff for policy when she was informed of the CIA's intention, administration sources said. She told the CIA that she opposed destroying the tapes, the sources added.

CIA officials have said that Jose A. Rodriguez Jr., then the director of clandestine operations, ordered their destruction in November 2005, and administration sources said last night that Miers, who was then White House counsel, learned of the order after it was carried out. News of Miers's knowledge was reported last night by ABC News.

A White House spokesman had no comment when asked about Miers and the tapes.

In separate letters to Mukasey and Hayden, House Judiciary Committee Chairman John Conyers Jr. (Mich.) and other committee Democrats said that "withholding of evidence sought in fact-finding or criminal investigations could amount to obstruction of justice."

The lawmakers also asked whether the Justice Department reviewed or approved of the destroying the tapes.

In the case of al-Qaeda operative Zacarias Moussaoui, prosecutors revealed in October that the CIA had discovered two videotapes and one audiotape of detainee interrogations, after saying that no such tapes existed. CIA officials say the tapes that were destroyed were not related to Moussaoui's request for material relevant to his case, however.

Abu Zubaida's interrogation played a role in the case against another alleged al-Qaeda operative, Jose Padilla, who is set to be sentenced in Miami early next year on terrorism charges.

Staff writers Peter Baker and Walter Pincus and staff researcher Julie Tate contributed to this report.

The Washington Post

washingtonpost.com

The Washington Post

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HEADLINE: Justice, CIA Begin Videotape Inquiry;
Spy Agency Asked to Preserve Evidence Related to Destroyed Interrogation Records

BYLINE: Josh White; Washington Post Staff Writer

BODY:

The Justice Department and the CIA announced yesterday that they have started a preliminary inquiry into the CIA's 2005 destruction of videotapes that depicted harsh interrogation of two terrorism suspects.

The announcement follows congressional demands Friday for an investigation into the CIA's action despite warnings from the White House and congressional leaders to preserve the tapes.

CIA Director Michael V. Hayden disclosed the destruction of the tapes Thursday in a letter to his staff, telling them that the identities of the interrogators in the 2002 sessions needed to be protected. Some lawmakers have rejected that explanation.

In a letter sent yesterday, Kenneth L. Wainstein, assistant attorney general for the Justice Department's national security division, wrote to CIA General Counsel John A. Rizzo to confirm the inquiry and asked the CIA to preserve evidence and documents.

Wainstein indicated in the letter that he will be working with the CIA inspector general's office to determine "whether a further investigation is warranted."

"Based on our recent discussions, I understand that your office has already reviewed the circumstances surrounding the destruction of the videotapes, as well as the existence of any pending relevant investigations or other preservation obligations at the time the destruction occurred," Wainstein wrote to the CIA.

Also yesterday, attorneys for a detainee who had been in CIA custody for three years released documents in which they asked a federal court to prevent the U.S. government from destroying evidence of his torture. The filing, on behalf of Guantanamo Bay detainee Majid Khan, one of 14 "high-value detainees" brought to the military prison from secret sites in other countries, came a week before the CIA acknowledged that it had destroyed the interrogation videotapes.

Officials and sources have identified the two terrorism suspects on the tapes as Zayn Abidin Muhammed Hussein Abu Zubaida, a close associate of Osama bin Laden, and Abd al-Rahim al-Nashiri, who was captured in the United Arab Emirates in 2002.

It is not clear which aggressive tactics are shown. Intelligence officials have identified Abu Zubaida as one of three detainees subjected to waterboarding, an aggressive technique that simulates drowning. Nashiri complained this year in documents filed for a hearing at Guantanamo Bay that he had been tortured into confessing to various terrorist acts and plots.

Hayden said in a statement released yesterday that the CIA will cooperate fully with the joint inquiry. "I welcome it as an opportunity to address questions that have arisen over the destruction back in 2005 of videotapes," he said. Wainstein requested a meeting with CIA officials early this week.

Sen. Charles E. Schumer (D-N.Y.), a member of the Judiciary Committee, praised the inquiry as "the kind of quick response the nation expects and deserves from an attorney general who puts the rule of law first," adding: "It is a refreshing change." Schumer was referring to recently confirmed Attorney General Michael B. Mukasey, who succeeded Alberto R. Gonzales.

Members of the House and Senate intelligence committees said they either were unaware the tapes existed, had never been briefed about their destruction or had warned the CIA not to destroy them.

Bush administration sources said that then-White House Counsel Harriet E. Miers knew of the tapes and told the CIA she opposed their destruction. Rep. Jane Harman (D-Calif.), said she warned the CIA's general counsel after a classified briefing in 2003 not to destroy any videotapes of its "enhanced interrogation program."

Lawyers with the Center for Constitutional Rights who represent Khan said they fear that the CIA and other U.S. agencies could also destroy evidence in their client's case. They argue in a 24-page filing with the U.S. Court of Appeals for the District of Columbia Circuit that Khan was subjected to systematic torture.

"Absent a preservation order, there is substantial risk that the torture evidence will disappear," the lawyers wrote in their Nov. 29 filing. The filing was part of an appeal of a military tribunal's finding this year that Khan is an "enemy combatant." Such appeals are allowed under U.S. law.

The U.S. government alleges that Khan, 27, who grew up in the Baltimore area and was arrested in Pakistan in March 2003, was part of the al-Qaeda terror network and was scouting ways to attack the United States while living here.

Khan alleges that after his arrest he was "subjected to an aggressive CIA detention and interrogation program notable for its elaborate planning and ruthless application of torture," according to the heavily redacted court filing. "The methods inflicted on Khan [redacted] were deliberately and systematically applied [redacted] for maximum effect. Khan admitted anything his interrogators demanded of him, regardless of the truth, [redacted] in order to end his suffering."

An intelligence official said yesterday that after 2002, the CIA did not produce interrogation videotapes similar to the ones destroyed.

Mark Mansfield, a CIA spokesman, said the United States does not use or condone torture.

"The fact of the matter is that the careful, professional and lawful questioning of hardened terrorists has produced thousands of intelligence reports, revealed exceptionally valuable insights on al-Qaeda's operations and organization, foiled terrorist plots, and saved innocent lives," Mansfield said.

The legal filing came after lawyers Gitanjali Gutierrez and Wells Dixon met Khan at Guantanamo Bay in October, the first time any of the high-value detainees was allowed to consult with an attorney.

In declassified notes released by the Center for Constitutional Rights, Khan told his attorneys that he can communicate with Abu Zubaida in a previously unidentified Guantanamo facility where detainees formerly imprisoned at secret CIA facilities are held, which he called Camp 7. Cmdr. J.D. Gordon, a Pentagon spokesman, said he could not discuss the specific location of Guantanamo detainees for security reasons.

Khan told his attorneys about their conversations.

"The collective experiences of these men, who were forcibly disappeared by the government and became ghost prisoners, reveal a sophisticated, refined program of torture operating with impunity outside the boundaries of any domestic or international law," according to the court filing.

Khan also told his attorneys that he has gone on hunger strikes to see his lawyers, to protest his living conditions, and to get copies of The Washington Post.

Staff writer Dan Eggen contributed to this report.

GRAPHIC: IMAGE; By Ron Edmonds -- Associated Press; White House press secretary Dana Perino told reporters Friday that Bush "has no recollection of being made aware of the tapes or their destruction" before he was briefed on the issue by CIA Director Michael V. Hayden on Thursday.

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December 7, 2007 Friday
Correction Appended
Late Edition - Final

SECTION: Section A; Column 0; Foreign Desk; Pg. 1

LENGTH: 1826 words

HEADLINE: C.I.A. DESTROYED 2 TAPES SHOWING INTERROGATIONS

BYLINE: By MARK MAZZETTI; Eric Lichtblau and Scott Shane contributed reporting.

DATELINE: WASHINGTON, Dec. 6

BODY:

The Central Intelligence Agency in 2005 destroyed at least two videotapes documenting the interrogation of two Qaeda operatives in the agency's custody, a step it took in the midst of Congressional and legal scrutiny about its secret detention program, according to current and former government officials.

The videotapes showed agency operatives in 2002 subjecting terrorism suspects -- including Abu Zubaydah, the first detainee in C.I.A. custody -- to severe interrogation techniques. 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.

In a statement to employees on Thursday, Gen. Michael V. Hayden, the C.I.A. director, said that the decision to destroy the tapes was made "within the C.I.A." and that they were destroyed to protect the safety of undercover officers and because they no longer had intelligence value.

The destruction of the tapes raises questions about whether agency officials withheld information from Congress, the courts and the Sept. 11 commission about aspects of the program.

The recordings were not provided to a federal court hearing the case of the terrorism suspect Zacarias Moussaoui or to the Sept. 11 commission, which was appointed by President Bush and Congress, and which had made formal requests to the C.I.A. for transcripts and other documentary evidence taken from interrogations of agency prisoners.

The disclosures about the tapes are likely to reignite the debate over laws that allow the C.I.A. to use interrogation practices more severe than those allowed to other agencies. A Congressional conference committee voted late Wednesday to outlaw those interrogation practices, but the measure has yet to pass the full House and Senate and is likely to face a veto from Mr. Bush.

The New York Times informed the intelligence agency on Wednesday evening that it was preparing to publish an article about the destruction of the tapes. In his statement to employees on Thursday, General Hayden said that the agency had acted "in line with the law" and that he was informing C.I.A. employees "because the press has learned" about the matter.

General Hayden's statement said that the tapes posed a "serious security risk" and that if they had become public they would have exposed C.I.A. officials "and their families to retaliation from Al Qaeda and its sympathizers."

Current and former intelligence officials said that the decision to destroy the tapes was made by Jose A. Rodriguez Jr., who was the head of the Directorate of Operations, the agency's clandestine service. Mr. Rodriguez could not be reached Thursday for comment.

Two former intelligence officials said that Porter J. Goss, the director of the agency at the time, was not told that the tapes would be destroyed and was angered to learn that they had been.

Through a spokeswoman, Mr. Goss declined to comment on the matter.

In his statement, General Hayden said leaders of Congressional oversight committees had been fully briefed about the existence of the tapes and told in advance of the decision to destroy them. But the two top members of the House

Intelligence Committee in 2005 said Thursday that they had not been notified in advance of the decision to destroy the tapes.

A spokesman for Representative Peter Hoekstra, Republican of Michigan, who was the committee's chairman between 2004 and 2006, said that Mr. Hoekstra was "never briefed or advised that these tapes existed, or that they were going to be destroyed."

The spokesman, Jamal Ware, also said that Mr. Hoekstra "absolutely believes that the full committee should have been informed and consulted before the C.I.A. did anything with the tapes."

Representative Jane Harman of California, the top Democrat on the committee between 2002 and 2006, said that she told C.I.A. officials several years ago that destroying any interrogation tapes would be a "bad idea."

"How in the world could the C.I.A. claim that these tapes were not relevant to a legislative inquiry?" she said. "This episode reinforces my view that the C.I.A. should not be conducting a separate interrogations program."

In both 2003 and 2005 C.I.A. lawyers told prosecutors in the Moussaoui case that the C.I.A. did not possess recordings of interrogations sought by the judge. Mr. Moussaoui's lawyers had hoped that records of the interrogations might provide exculpatory evidence for Mr. Moussaoui, showing that the Qaeda detainees did not know Mr. Moussaoui and clearing him of involvement in the Sept. 11, 2001, plot.

Paul Gimigliano, a C.I.A. spokesman, said that the court had sought tapes of "specific, named terrorists whose comments might have a bearing on the Moussaoui case" and that the videotapes destroyed were not of those individuals. Intelligence officials identified Abu Zubaydah as one of the detainees whose interrogation tape was destroyed, but the other detainee's name was not disclosed.

General Hayden has said publicly that information obtained through the C.I.A.'s detention and interrogation program has been the best source of intelligence for operations against Al Qaeda. In a speech last year, President Bush said that information from Mr. Zubaydah had helped lead to the capture in 2003 of Khalid Sheikh Mohammed, the mastermind of the Sept. 11 attacks.

Staff members of the Sept. 11 commission, which completed its work in 2004, expressed surprise when they were told that interrogation videotapes had existed until 2005.

"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," said Phillip D. Zelikow, who served as executive director of the Sept. 11 commission and later as a senior counselor to Secretary of State Condoleezza Rice.

"No tapes were acknowledged or turned over, nor was the commission provided with any transcript prepared from recordings," he said.

Daniel Marcus, a law professor at American University who served as general counsel for the Sept. 11 commission and was involved in the discussions about interviews with Qaeda leaders, said he had heard nothing about any tapes being destroyed.

If tapes were destroyed, he said, "it's a big deal, it's a very big deal," because it could amount to obstruction of justice to withhold evidence being sought in criminal or fact-finding investigations.

Mr. Gimigliano, the C.I.A. spokesman, said that the agency "went to great lengths to meet the requests of the 9/11 commission," and that the C.I.A. had preserved the tapes until the commission ended its work in case members requested the tapes.

Several current and former intelligence officials were interviewed for this article over a period of several weeks. All requested anonymity because information about the tapes had been classified until General Hayden issued his statement on Thursday acknowledging that they had been destroyed.

The C.I.A. program that included the detention and interrogation of terrorism suspects began after the capture of Mr. Zubaydah in March 2002. The C.I.A. has said that the Justice Department and other elements of the executive branch reviewed and approved the use of a set of harsh techniques before they were used on any prisoners, and that the Justice Department issued a classified legal opinion in August 2002 that provided explicit authorization for their use.

Some members of Congress have since sought to ban some of the techniques, saying that they amounted to torture, which is prohibited under American law. But President Bush, who revealed the existence of the C.I.A. program in September 2006, has defended the techniques as legal, and has said they have proven beneficial in obtaining critical intelligence information.

Some of the harshest techniques, including waterboarding, which induces a feeling of drowning and near-suffocation, were used on several of the first Qaeda operatives captured by the C.I.A., including Abu Zubaydah. But intelligence officials have said that waterboarding is no longer on an approved list spelled out in a classified executive order that was issued by the White House this year.

In his statement, General Hayden said the tapes were originally made to ensure that agency employees acted in accordance with "established legal and policy guidelines." He said the agency stopped videotaping interrogations in 2002.

"The tapes were meant chiefly as an additional, internal check on the program in its early stages," he said. He said they were destroyed only after the agency's Office of the General Counsel and Office of the Inspector General had examined them and determined that they showed lawful methods of questioning.

Tom Malinowski, Washington director of Human Rights Watch, said General Hayden's claim that the tapes were destroyed to protect C.I.A. officers "is not credible."

"Millions of documents in C.I.A. archives, if leaked, would identify C.I.A. officers," Mr. Malinowski said. "The only difference here is that these tapes portray potentially criminal activity. They must have understood that if people saw these tapes, they would consider them to show acts of torture, which is a felony offense."

It has been widely reported that Abu Zubaydah was subjected to several tough physical tactics. But the current and former intelligence officials who described the decision to destroy the videotapes said that C.I.A. officers had judged that the release of photos or videos depicting his interrogation would provoke a strong reaction.

In exchanges involving the Moussaoui case, the C.I.A. notified the United States attorney's office in Alexandria, Va., in September that it had discovered two videotapes and one audio tape that it had not previously acknowledged to the court, but made no mention of any tapes destroyed in 2005.

The acknowledgment was spelled out in a letter sent in October by federal prosecutors that amended the C.I.A.'s previous declarations involving videotapes. The letter is heavily redacted, with sentences identifying the detainees blacked out.

Signed by the United States attorney, Chuck Rosenberg, the letter states that the C.I.A.'s search for interrogation tapes "appears to be complete."

Mr. Moussaoui was convicted last year and sentenced to life in prison.

Representative Rush Holt of New Jersey, a Democratic member of the House Intelligence Committee, has been pushing legislation in Congress to have all detainee interrogations videotaped so officials can refer to the tapes multiple times to glean better information.

Mr. Holt said he had been told many times that the C.I.A. did not record the interrogation of detainees. "When I would ask them whether they had reviewed the tapes to better understand the intelligence, they said, 'What tapes?'," he said.

URL: <http://www.nytimes.com>

CORRECTION-DATE: December 8, 2007

CORRECTION:

Because of an editing error, a front-page article yesterday about the C.I.A.'s destruction of two videotapes documenting the interrogations of agents of Al Qaeda rendered incorrectly a quotation from Gen. Michael V. Hayden, the director of intelligence, in which he explained to C.I.A. employees why he was informing them of the destruction. General Hayden said, "The press has learned that back in 2002, during the initial stage of our terrorist detention program, C.I.A. videotaped interrogations, and destroyed the tapes in 2005." He did not say he was informing them "because" the press has learned about the episode.

LOAD-DATE: December 7, 2007

Congress Looks Into Obstruction As Calls for Justice Inquiry Rise The New York Times December 8, 2007 Saturday

The New York Times

December 8, 2007 Saturday
Late Edition - Final

SECTION: Section A; Column 0; Foreign Desk; Pg. 1

LENGTH: 980 words

HEADLINE: Congress Looks Into Obstruction As Calls for Justice Inquiry Rise

BYLINE: By ERIC LICHTBLAU

DATELINE: WASHINGTON, Dec. 7

BODY:

The Central Intelligence Agency faced the threat of obstruction-of-justice investigations on Friday from both the Justice Department and Congressional committees over the destruction of videotapes of interrogations of Qaeda operatives.

The Justice Department said it would review calls for a formal inquiry into the destruction of the tapes, while the House and Senate intelligence committees said they were opening investigations of their own into the episode, which Senator John D. Rockefeller IV of West Virginia, chairman of the Senate panel, called "extremely disturbing."

Dana Perino, the White House spokeswoman, said Friday that President Bush "has no recollection of being made aware of the tapes or their destruction" before this week. She added that the C.I.A. and the White House counsel's office were reviewing the facts and that they would cooperate with any Justice Department inquiry.

The pressure for a full investigation into the handling of the tapes puts Attorney General Michael B. Mukasey in a difficult position early in his tenure because of the questions that arose at his confirmation hearings in October about his views on harsh C.I.A. interrogation tactics.

The American Civil Liberties Union and other liberal groups on Friday called for the appointment of an outside counsel to examine possible criminal acts by the C.I.A., arguing that the Justice Department had proved unable in the past to adequately investigate claims of prisoner abuse against the administration.

The tapes, which showed severe interrogation methods against two operatives from Al Qaeda, Abu Zubaydah and Abd al-Rahim al-Nashiri, were made in 2002 and destroyed in 2005, the C.I.A. acknowledged this week after being questioned about the issue by The New York Times. The agency said the tapes were destroyed in part to protect the identities of the interrogators.

Meanwhile, the former chairmen of the Sept. 11 commission, who said the C.I.A. assured them repeatedly during their inquiry that no original material existed from its interrogations of Qaeda figures, said they were furious to learn about the tapes.

The C.I.A. indicated that the Sept. 11 commission never specifically asked for any tape recordings of prisoner interrogations.

But in separate interviews on Friday, the co-chairmen, Thomas H. Kean and Lee H. Hamilton, said they had made clear in hours of negotiations and discussions with the C.I.A., as well as in written requests, that they wanted all material connected to the interrogations of Qaeda operatives in the agency's custody in order to get a complete understanding of the events leading up to the Sept. 11 attacks for their 2004 report.

The commission ended up getting summaries of interrogation reports and was able to forward questions of its own for C.I.A. officers to ask the prisoners.

"The C.I.A. certainly knew of our interest in getting all the information we could on the detainees, and they never indicated to us there were any videotapes," Mr. Hamilton said. "Did they obstruct our inquiry? The answer is clearly yes. Whether that amounts to a crime, others will have to judge."

Congress Looks Into Obstruction As Calls for Justice Inquiry Rise The New York Times December 8, 2007 Saturday

Mr. Kean said, "I'm upset that they didn't tell us the truth."

The existence of material on unidentified Qaeda detainees also became a central issue in the terrorism prosecution of Zacarias Moussaoui, who sought access to witness statements in an effort to show that he did not have advance knowledge of the Sept. 11 attacks.

The Justice Department, under questioning from the federal judge in the case in 2005, denied that any tape recording of the interrogations existed, only to concede last month that the C.I.A. had found three tapes that are apparently still in existence. It is unclear which Qaeda figures are on those tapes.

Edward B. MacMahon Jr., who represented Mr. Moussaoui during his trial in 2006, said in an interview on Friday that based on the C.I.A.'s acknowledgment that tapes of two Qaeda prisoners were destroyed, "It's obvious to me that they destroyed material evidence in the case."

Gen. Michael V. Hayden, the director of the C.I.A., said in a statement on Thursday that the tape of Mr. Zubaydah's interrogation was not relevant to the Moussaoui trial. But Mr. MacMahon said, "General Hayden isn't a federal judge, and that's not his decision to make."

Ms. Perino said President Bush "has complete confidence" in General Hayden and his handling of the issue.

With calls from House and Senate Democrats for a full investigation, the White House seemed to be bracing for an investigation from the Justice Department by initiating an inquiry of its own through the White House counsel's office. The aim, Ms. Perino said, is to "gather facts."

The Justice Department said that it was reviewing the requests from Congress for a full investigation. A senior Justice Department official, who spoke about internal deliberations on condition of anonymity, suggested that the department would be likely to wait for a referral from the C.I.A. inspector general.

Key questions in Justice Department or Congressional inquiries are likely to focus on the C.I.A.'s policies on the destruction of classified material; the legal rationale for destroying the tapes; the status of requests pending at the time of the destruction from Mr. Moussaoui's lawyers, the Sept. 11 commission and other proceedings; and what members of Congress were told about the tapes.

With Democrats seizing on the destruction of the tapes, some leading Republicans appeared to distance themselves from the political fallout. Representative Peter Hoekstra of Michigan, the top Republican on the intelligence committee, sent a letter to the C.I.A., along with Representative Silvestre Reyes of Texas, chairman of the panel, saying the agency's suggestion that the committee was told of the tapes' destruction "simply is not true."

URL: <http://www.nytimes.com>

LOAD-DATE: December 8, 2007

In Arrogant Defense of Torture The New York Times December 9, 2007 Sunday

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December 9, 2007 Sunday
Late Edition - Final

SECTION: Section 4; Column 0; Editorial Desk; EDITORIAL; Pg. 9

LENGTH: 345 words

HEADLINE: In Arrogant Defense of Torture

BODY:

The White House is already complaining about reports that House and Senate conferees have come to an agreement on an intelligence measure mandating that all agencies, including the Central Intelligence Agency, comply with the Army Field Manual's outlawing of torture. The manual properly reflects American law by explicitly proscribing the gamut of torture measures -- including waterboarding -- that have proved dear to the heart of administration zealots.

Waterboarding, in which interrogators subject suspects to the grisly conditions of simulated drowning, is illegal under both federal laws and international compacts, including the Geneva Conventions. But the administration has foolishly flouted these laws, which were adopted to protect American citizens captured overseas, as much as suspects captured by Americans, from barbaric abuse by interrogators.

The administration denies it has stooped to torture in intelligence gathering -- despite its post-9/11 record of secret detention programs and rendition kidnappings that outsource interrogations to governments known to use torture. The Times reported last week that the C.I.A. destroyed hundreds of hours of videotapes documenting the interrogation of two Al Qaeda operatives. Congress must find out what was on those tapes and who is responsible for their destruction.

"The C.I.A. program has provided valuable, actionable intelligence," a White House spokesman insisted, dismissing Congress's Army Field Manual initiative as "dangerous and misguided." The new attorney general, Michael Mukasey, twisted himself into knots during his confirmation hearing, refusing to say whether waterboarding was torture and therefore illegal. Small wonder that Congress feels obliged to require that all agencies follow the Army manual's clear proscription of torture.

There is certainly merit in a Congressional debate. Lawmakers should demand that the White House and its allies explain why intelligence operatives should scoff at a ban on torture that soldiers swear to and is unquestionably the law of the land.

URL: <http://www.nytimes.com>

LOAD-DATE: December 9, 2007

The New York Times

December 9, 2007 Sunday
Late Edition - Final**SECTION:** Section 1; Column 0; Foreign Desk; Pg. 28**LENGTH:** 1368 words**HEADLINE:** Justice Dept. and C.I.A. Watchdog Start Inquiry of Interrogation Videos' Destruction**BYLINE:** By MARK MAZZETTI and DAVID JOHNSTON; William Glaberson contributed reporting from Washington, and Margot Williams from New York.**DATELINE:** WASHINGTON, Dec. 8**BODY:**

The Justice Department and the Central Intelligence Agency's internal watchdog on Saturday began a joint preliminary inquiry into the spy agency's destruction of hundreds of hours of videotapes showing interrogations of top operatives of Al Qaeda.

The announcement comes amid new questions about which officials inside the C.I.A. were involved in the decision to destroy the videotapes, which showed severe interrogation methods used on two Qaeda suspects, Abu Zubaydah and Abd al-Rahim al-Nashiri.

The agency operative who ordered the destruction of the tapes in November 2005 was Jose A. Rodriguez Jr., then the chief of the C.I.A.'s national clandestine service, known as the Directorate of Operations until 2005. On Saturday, a government official who had spoken recently with Mr. Rodriguez on the matter said that Mr. Rodriguez told him that he had received approval from lawyers inside the clandestine service to destroy the tapes.

This disclosure could broaden the scope of the inquiry into the tapes' destruction. Several officials said that top lawyers at the White House and the Justice Department advised the C.I.A. in 2003 not to destroy the videos.

Current and former intelligence officials said that the agency's senior lawyer, John A. Rizzo, had not been notified about the decision and was angered to learn about the destruction of the tapes, which could complicate the prosecution of Abu Zubaydah and others.

Mr. Rizzo's position, together with the fact that the C.I.A. inspector general, John L. Helgerson, is now examining the matter, indicates a greater level of internal concern at the agency over the destruction than Gen. Michael V. Hayden, the C.I.A. director, indicated in his message to agency employees on Thursday. General Hayden's message said that Mr. Helgerson's office had reviewed the tapes in 2003, but did not mention whether the inspector general had signed off on their destruction.

In a statement released on Saturday, General Hayden said he welcomed the inquiry and the "C.I.A. will cooperate fully."

Investigators will gather facts to determine whether a full inquiry is warranted. If it is determined that any agency employee broke the law, the standard procedure would be for Mr. Helgerson to issue a criminal referral to the Justice Department.

The investigation comes after both the Senate and House intelligence committees started their own investigations into the destruction of the tapes. In a statement on Saturday, the chairman of the House Intelligence Committee, Representative Silvestre Reyes, Democrat of Texas, said the inquiry would be an "important first test" for Attorney General Michael B. Mukasey to demonstrate his independence. "I have yet to receive a satisfactory answer as to why Congress was kept in the dark about this matter," he said.

In a letter to the C.I.A. on Saturday, Assistant Attorney General Kenneth L. Wainstein, who heads the Justice Department's National Security Division, requested to meet with Mr. Helgerson and Mr. Rizzo early next week to discuss the inquiry.

Mr. Rodriguez, who could not be reached for comment, announced his retirement from the agency this summer. The New York Times has made a request through an agency spokesman to speak with him.

Q & A; The facts behind the CIA's destruction of videotapes Los Angeles Times December 9, 2007 Sunday

Los Angeles Times

December 9, 2007 Sunday
Home Edition

SECTION: MAIN NEWS; National Desk; Part A; Pg. 33

LENGTH: 764 words

HEADLINE: Q & A;
The facts behind the CIA's destruction of videotapes

BYLINE: By Times Staff Writers

BODY:

The Justice Department and CIA have announced a preliminary investigation into whether CIA officials obstructed justice or engaged in an illegal coverup by destroying videotapes in 2005 that showed the interrogations of two terrorism suspects.

Here is what's behind the inquiry.

Question: What are the CIA tapes?

Answer: Beginning in 2002, the CIA held terrorism suspects in secret locations and interrogated them, using highly controversial techniques that critics say are tantamount to torture. The techniques included sleep deprivation, stressful physical positions and waterboarding, or simulated drowning. In at least two cases, the CIA videotaped the interrogations, compiling hundreds of hours of clear images of American agents sometimes engaging in harsh treatment of foreign prisoners. One prisoner was Abu Zubaydah, the CIA's first terrorism detainee; the other has not been identified.

Q: When were the tapes destroyed?

A: The CIA destroyed the tapes in late 2005. At that time, Congress was adopting new restrictions on the use of harsh detainee treatment and the Army was rewriting its field manual to emphasize the need for moderation. At the same time, domestic U.S. prosecutions of terrorism suspects -- including Zacarias Moussaoui and Jose Padilla -- were underway. An issue in those cases was what other suspected terrorists had said about the defendants while under interrogation. Also at that time, the Sept. 11 commission, which failed in its effort to obtain records of interrogations before issuing its 2004 report, was completing a year of follow-up reports that criticized U.S. anti-terrorism efforts.

Q: Why did the CIA destroy the tapes?

A: Director Michael V. Hayden told the CIA workforce last week that the tapes were destroyed because they were "not relevant to any internal, legislative or judicial inquiries" and, if made public, could identify CIA employees who would be vulnerable to retaliation by militants.

Q: Was that explanation accepted?

A: No. Members of Congress said the tapes had potential value to ongoing congressional proceedings, and critics said they could have had a high degree of relevance to the Sept. 11 commission and in terrorism trials. Critics also said the CIA could have obscured any images of Americans in the tapes, and noted that the agency possesses vast amounts of other material that could identify CIA employees which have not been destroyed. As important to many critics, the tapes could have settled years of debate about the nature of U.S. treatment of detainees, including questions about how they were interrogated and whether it constituted legal questioning, harsh treatment or torture.

Q: Did the CIA provide adequate notice that it was going to destroy the tapes?

A: Hayden said the CIA told Congress about the tapes and its plans to destroy them and that it consulted with appropriate agency officials, including the CIA general counsel and inspector general. However, lawmakers said the CIA provided only cursory information about the tapes and did not detail the plans to destroy them. Other top CIA officials may have disagreed with the decision, and it is not known what the CIA inspector general, an agency watchdog who has been critical of detention practices, had to say about the tapes.

Q & A: The facts behind the CIA's destruction of videotapes Los Angeles Times December 9, 2007 Sunday

Q: Did others agree with the decision to destroy the tapes?

A: Many did not. Members of Congress, including Rep. Jane Harman (D-Venice), then a ranking member of the House Intelligence Committee, warned the CIA not to destroy the tapes. In addition, then-White House Counsel Harriet E. Miers was reported to have told agency officials to preserve them.

Q: Are the tapes germane to trials of suspected terrorists?

A: Possibly. Attorneys in the case of Moussaoui, who is serving a life sentence, want the judge to review the issue. Padilla faces sentencing in the near future. More important, the CIA initially told U.S. prosecutors that no such tapes existed, an assertion provided to judges in sworn legal documents that later had to be corrected when the tapes' existence was revealed.

Q: What happens next?

A: The Justice Department and CIA will determine whether a full investigation is warranted. In Congress, members of the intelligence and judiciary committees -- and possibly others -- will have to decide how deeply to investigate. In courts, judges may be asked to rule whether the CIA acted improperly in not revealing the existence of the tapes and whether they might have affected the outcomes of trials.

--
Times staff writers Greg Miller, Richard B. Schmitt and Josh Meyer in Washington contributed to this report.

LOAD-DATE: December 9, 2007

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December 8, 2007 Saturday
FINAL

SECTION: EDITORIAL; FLORIDA; OPINION; Pg. A20

LENGTH: 248 words

HEADLINE: Get to the bottom of it

Our position: Congress should launch probe into CIA's destruction of interrogation videotapes

BODY:

There's the U.S. government, and then there's the Central Intelligence Agency. The notion that the latter's part of the former seems quaintier than ever after disclosure by The New York Times that the CIA again withheld information requested by the courts and a fact-finding arm of Congress and the president.

Actually, more than withheld. Destroyed. The CIA destroyed videotapes it made in 2002 of severe interrogation techniques it used on terrorist suspects -- tapes that fall within the kind of evidence sought by a federal court and the Sept. 11 Commission.

But, says CIA Director Gen. Michael Hayden, they served no intelligence value and could have compromised the safety of interrogators if they'd gotten into the wrong hands.

Is that so? A former intelligence official says not, telling the Times the reason they disappeared was fear of another Abu Ghraib, where photos of abuse at a prison in Iraq caused revulsion worldwide.

In this country, the tapes' destruction may add up to obstruction of justice. Withholding evidence from Congress and the courts can get you that. Worldwide, their destruction could make millions think the CIA models itself after Abu Ghraib.

And why not? The CIA is allowed to interrogate more harshly than the military. Video of those techniques is suppressed. Why not think the worst?

Congress needs to investigate this mess. This cover-up. But good luck to it in getting to the bottom of it, given the CIA's willingness to share information about its operations.

LOAD-DATE: December 8, 2007

EDITORIAL: Congress must investigate destruction of CIA tapes The Kansas City Star (Missouri) December 9, 2007
Sunday

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December 9, 2007 Sunday

SECTION: COMMENTARY

ACC-NO: 20071209-KC-EDITORIAL-Congress-must-investigate-destruction-of-CIA-tapes-1209

LENGTH: 431 words

HEADLINE: EDITORIAL: Congress must investigate destruction of CIA tapes

BYLINE: The Kansas City Star, Mo.

BODY:

Dec. 9--The CIA's destruction of videotapes showing abusive interrogations was an act of arrogance that raises serious questions about obstruction of justice.

The tapes reportedly included evidence of waterboarding, a ghastly procedure that obviously constitutes torture. Federal law, in line with this country's highest moral values, prohibits torture.

The CIA's destruction of these tapes in 2005 may have harmed national security as well. We can only hope their destruction does not undermine the prosecution of terrorists, allowing them to go free.

It is troubling, too, that these tapes were never turned over to the special commission that investigated the Sept. 11 attacks. The work of that commission was critical to protecting the country from future catastrophes.

The executive director of the commission said it asked for such material and was assured that nothing had been held back.

Last week, CIA Director Michael Hayden claimed that the existence of these tapes within his own organization posed some sort of special security risk to CIA personnel.

Tom Malinowski, Washington director of Human Rights Watch, offers the obvious rebuttal: "Millions of documents in CIA archives, if leaked, would identify CIA officers. The only difference here is that these tapes portray potentially criminal activity. They must have understood that if people saw these tapes, they would consider them to show acts of torture, which is a felony offense."

Hayden also fell back on one of the Bush administration's favorite sleights of hand: attempting to spread the blame for its mistakes to lawmakers who were "fully briefed."

The disingenuous implication is that the lawmakers were not only briefed but gave their consent. This charade has played out again, with Hayden piously noting that key members of Congress were briefed.

But one of them was Rep. Jane Harman, the top Democrat on the House Intelligence Committee in 2005. And she objected, warning CIA officials that it was a "bad idea" to destroy the tapes.

Congress needs to vigorously investigate what the tapes showed, who authorized their destruction, whether laws were broken and, if so, whether there was a CIA cover-up.

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LOAD-DATE: December 9, 2007

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Eureka Times Standard (California)

December 9, 2007 Sunday

SECTION: OPINION

LENGTH: 343 words

HEADLINE: Washington starting to come unraveled

BYLINE: The Times-Standard

BODY:

Just when you thought America's growing reputation as a rogue nation could not get worse, word comes that the Central Intelligence Agency destroyed at least two videotapes of harsh interrogations of terror suspects -- at least one of whom is thought to have been subjected to "waterboarding." This is the technique where the detainee is essentially "drowned" under controlled conditions, a method that most experts consider to be torture, but which the Bush administration euphemistically calls "enhanced interrogation."

It is become clear that a coverup is under way to protect government officials from criminal prosecution for all manner of human rights violations. The Senate Intelligence Committee may investigate the latest bombshell, even as word comes down that House and Senate negotiators have agreed on a law to ban the use of waterboarding and other cruel techniques by the CIA.

The Bush administration has threatened to veto such legislation in the past. If the president does so, it would reinforce the charges by the American Civil Liberties Union that the shredding of the tapes was more evidence of a long-term pattern of protecting government officials -- and even military contractors like Blackwater U.S.A. -- from criminal charges.

The explosive revelation about the tapes' destruction came after the New York Times told the CIA it was working on a story, and agency workers were sent a message by CIA Director Michael Hayden to prepare for the fallout.

It was only a few days earlier that a furor over the National Intelligence Estimate report -- which said Iran appeared to have shut down its secret nuclear weapon program four years ago -- raised fresh questions about White House manipulation of intelligence data for purposes of pushing the nation toward another war.

In Washington, when conspiratorial cabals come unraveled, they do so very quickly. From the way government officials are scrambling for what the intelligence community calls "plausible deniability," it's clear there could be heavy collateral damage to many reputations.

LOAD-DATE: December 9, 2007

1. The Australian (Australia), December 10, 2007 Monday, 1 - All-round Country Edition, WORLD; Pg. 14, 659 words, Inquiry into why CIA tapes destroyed, Correspondents in Washington
2. Christian Science Monitor, December 10, 2007, Monday, USA; Pg. 3, 1084 words, Destroyed CIA tapes spur probes, Warren Richey Staff writer of The Christian Science Monitor
3. Herald Sun (Australia), December 10, 2007 Monday, 1 - FIRST Edition, NEWS; Pg. 26, 157 words, Inquiries to probe CIA tapes scandal
4. Investor's Business Daily, December 10, 2007 Monday, NATIONAL EDITION, ISSUES & INSIGHTS; EDITORIALS; Pg. A18, 528 words, Wail Of The Tape
5. The New Zealand Herald, December 10, 2007 Monday, NEWS; World, 596 words, Review ordered into why tapes destroyed
6. Townsville Bulletin (Australia), December 10, 2007 Monday, 1 - Edition, WORLD; Pg. 13, 902 words, Around the world
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