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C.I.A. Destroyed 2 Tapes Showing Interrogations

By [MARK MAZZETTI](#)

Correction Appended

WASHINGTON, Dec. 6 — 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 [Philip 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.

Eric Lichtblau and Scott Shane contributed reporting.

Correction: December 8, 2007

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.

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