

EXHIBIT 39



CIA destroyed terrorism suspect videotapes

Director says interrogation tapes were security risk; critics call move illegal

NBC News and news services

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WASHINGTON — The CIA destroyed videotapes it made in 2002 of the interrogations of two top terror suspects because it was afraid that keeping them "posed a security risk," Director Michael Hayden told agency employees.

Current and former intelligence officials told NBC News' Robert Windrem that one of the videos included the waterboarding of Abu Zubaydah, the person in charge of al-Qaida's training camps and the group's first major leader to be captured.

Hayden's revelation to the CIA employees caused a commotion on Capitol Hill where members of the Senate Intelligence Committee immediately vowed to conduct a thorough review. A leading human rights group voiced alarm about it.

In his message to agency workers, Hayden said that House of Representatives and Senate intelligence committee leaders had been informed of the existence of the tapes and the CIA's intention to destroy them to protect the identities of the questioners. He also said the CIA's internal watchdog watched the tapes in 2003 and verified that the interrogation practices were legal. Hayden said the tapes were destroyed three years after the 2002 interrogations.

Jane Harman, then the senior Democrat on the House Intelligence Committee, was one of only four members of Congress in 2003 informed

of the tapes' existence and the CIA's intention to ultimately destroy them.

'Bad idea'

"I told the CIA that destroying videotapes of interrogations was a bad idea and urged them in writing not to do it," Harman said. While key lawmakers were briefed on the CIA's intention to destroy the tapes, they were not notified two years later when the spy agency actually carried out the plan. The Senate Intelligence Committee's Democratic chairman, Jay Rockefeller, said the committee only learned of the tapes' destruction in November 2006.

Republican Pete Hoekstra, who was chairman of the House Intelligence Committee from August 2004 until the end of 2006, said through a spokesman that he does not remember being informed of the videotaping program.

"Congressman Hoekstra does not recall ever being told of the existence or destruction of

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these tapes," said Jamal D. Ware, senior adviser to the committee. "He believes that Director Hayden is being generous in his claim that the committee was informed. He believes the committee should have been fully briefed and consulted on how this was handled."

Jennifer Daskal, senior counsel with Human Rights Watch, said that destroying the tapes was illegal. "Basically this is destruction of evidence," she said, calling Hayden's explanation that the tapes were destroyed to protect CIA identities "disingenuous."

Waterboarding?

In the statement to agency employees, CIA director Hayden revealed that the agency destroyed all copies of the video in 2005. While the official agency statement does not mention waterboarding, officials tell NBC News the videos included the waterboarding of Zubaydah. He was known as al-Qaida's "dean of students" and had an encyclopedic knowledge of al-Qaida operatives worldwide. He is now awaiting trial at the U.S. prison at the Navy base at Guantanamo Bay, Cuba.

Zubaydah, under harsh questioning, told CIA interrogators about alleged 9/11 accomplice Ramzi Binalshibh, President Bush said publicly in 2006. Binalshibh was captured and interrogated and, with Zubaydah's information, authorities in 2003 captured Khalid Sheikh Mohammed, the purported mastermind of the Sept. 11 attacks.

Hayden said that a secondary reason for the taped interrogations was to have backup documentation of the information gathered.

"The agency soon determined that its documentary reporting was full and exacting, removing any need for tapes. Indeed, videotaping stopped in 2002," Hayden said.

The CIA is known to have waterboarded three prisoners since the Sept. 11 terrorist attacks, but not since 2003. Hayden banned the use of the procedure in 2006, according to knowledgeable officials.

The disclosure of the tapes' destruction came on the same day the House and Senate intelligence committees agreed to legislation prohibiting the CIA from using "enhanced interrogation techniques." The White House Thursday threatened to veto the bill.

Attempt to get ahead of newspaper

Hayden's message to CIA employees was an attempt to get ahead of a New York Times story about the videotapes, The Associated Press reported.

In the story in the newspaper, members of the Sept. 11 commission said they were surprised the interrogation tapes existed until 2005.

The commission had asked for material of this kind during their investigation that ended in 2004, 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, told the newspaper.

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“The commission was assured that we had received all the material responsive to our request,” he said. “No tapes were acknowledged or turned over, nor was the commission provided with any transcript prepared from recordings.”

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 al-Qaida leaders, warned “it’s a very big deal” if tapes were destroyed, the New York Times reported.

It could amount to obstruction of justice to withhold evidence being sought in criminal or fact-finding investigations, Marcus told the New York Times.

'In line with the law'

Hayden insisted that the CIA's actions were legal.

"What matters here is that it was done in line with the law," he said. "Over the course of its life, the agency's interrogation program has been of great value to our country. It has helped disrupt terrorist operations and save lives. It was built on a solid foundation of legal review. It has been conducted with careful supervision. If the story of these tapes is told fairly, it will underscore those facts."

The CIA says the tapes were destroyed late in 2005, a year marked by increasing pressure from defense attorneys to obtain videotapes of detainee interrogations. The scandal over harsh treatment of detainees at Abu Ghraib prison in Iraq had focused public attention on interrogation techniques.

Beginning in 2003, attorneys for al-Qaida conspirator Zacarias Moussaoui began

seeking videotapes of interrogations they believed might help them show their client was not a part of the Sept. 11 attacks. These requests heated up in 2005 as the defense slowly learned the identities of more detainees in U.S. custody.

In May 2005, U.S. District Judge Leonie Brinkema ordered the government to disclose whether interrogations were recorded. The government objected to that order, and the judge modified it on Nov. 3, 2005, to ask for confirmation of whether the government "has video or audio tapes of these interrogations" and then named specific ones. Eleven days later, the government denied it had video or audio tapes of those specific interrogations.

Failed to hand-over tapes

Last month, the CIA admitted to Brinkema and a circuit judge that it had failed to hand over tapes of enemy combatant witnesses. Those interrogations were not part of the CIA's detention program and were not conducted or recorded by the agency, the agency said.

"The CIA did not say to the court in its original filing that it had no terrorist tapes at all. It would be wrong to assert that," CIA

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spokesman George Little said.

The 9/11 Commission referenced the 2002 interrogations of Abu Zubaydah and Binalshibh multiple times throughout its report, but cited written documents and audiotapes only.

There is no mention in the letter of the tapes that CIA officials destroyed in 2005, The New York Times reported. Moussaoui was convicted last year and sentenced to life in prison.

John Radsan, who worked as a CIA lawyer from 2002 to 2004 and is now a professor at William Mitchell College of Law, said destroying these tapes could carry legal penalties, according to the newspaper.

“If anybody at the CIA hid anything important from the Justice Department, he or she should be prosecuted under the false statement statute,” he told the New York Times.

NBC, The Associated Press and the New York Times contributed to this report.

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