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Why Did The CIA Destroy Detainee Tapes?

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(CBS/AP) A well informed source tells **CBS News** the videotapes of U.S. interrogations of two high level al Qaeda operatives were destroyed to protect CIA officers from criminal prosecution, reports **CBS News national security correspondent David Martin**.

A day after CIA Director Gen. Michael Hayden told agency employees the tapes were destroyed in 2005, members of Congress, human rights groups and lawyers for accused terrorists said the tapes may have been key evidence that the U.S. government had illegally authorized torture.

Angry congressional Democrats are demanding that the Justice Department investigate why the CIA destroyed videotapes of the interrogation of two terror suspects.

The Senate's No. 2 Democrat, Dick Durbin, said Attorney General Michael Mukasey should find out "whether CIA officials who destroyed these videotapes and withheld information about their existence from official proceedings violated the law."

Democratic Sen. Edward Kennedy accused the CIA of a cover-up. "We haven't seen anything like this since the 18½-minute gap in the tapes of President Richard Nixon," he said in a Senate floor speech. The gap, which Nixon's secretary attributed to an accidental erasure, played a major role in the loss of support that resulted in Nixon's resignation.

The Democratic chairman of the Senate Armed Services Committee, Carl Levin, told reporters the CIA's explanation that the tapes were destroyed to protect the identity of agents is "a pathetic excuse," adding: "You'd have to burn every document at the CIA that has the identity of an agent on it under that theory."

Democrats on the House Judiciary Committee sent letters to CIA Director Gen. Michael Hayden and Mukasey asking whether the Justice Department gave legal advice to the CIA on the destruction of the tapes and whether it was planning an obstruction-of-justice investigation.

White House press secretary Dana Perino said Friday that President George W. Bush did not recall being told about the tapes or their destruction. But she could not rule out White House involvement in the decision to destroy the tapes, saying she had asked only the president about it, not others.

Perino refused to say whether the destruction could have been an obstruction of justice or a threat to cases against terror suspects. If the attorney general should decide to investigate, "of course the White House would support that," she said.

In a daily press briefing dedicated almost solely to the topic of the CIA tapes, Perino responded 19 times that she didn't know or couldn't comment.

At least one White House official, then-White House Counsel Harriet Miers, knew about the CIA's planned destruction of videotapes in 2005 that documented the interrogation of two al Qaeda operatives, ABC news reported Friday. Three officials told ABC News that Miers urged the CIA not to destroy the tapes. White House officials declined to comment on the report.

The spy agency destroyed the tapes in November 2005, at a time when human rights groups and lawyers for detainees were clamoring for information about the agency's secret detention and interrogation program, and Congress and U.S. courts were debating where "enhanced interrogation" crossed the line into torture.

Also at that time, the Senate Intelligence Committee was asking whether the videotapes showed CIA interrogators were complying with interrogation guidelines. The CIA refused twice in 2005 to provide the committee with its general counsel's report on the tapes, according to the committee's Democratic chairman, Sen. Jay Rockefeller.

Hayden told agency employees Thursday that the recordings were destroyed out of fear the tapes would be leaked to the press and reveal the identities of interrogators. He said the sessions were videotaped to provide an added layer of legal protection for interrogators using new, harsh methods. Bush had just authorized those methods as a way to break down the defenses of recalcitrant prisoners.

Destruction of the tapes came in the midst of an intense national debate about how forcefully prisoners could be grilled to get them to talk. Not long after the tapes were destroyed, Congress adopted the Detainee Treatment Act, championed by Republican Sen. John McCain, who was tortured while a prisoner of war in Vietnam. The law prohibits not only torture, but cruel, inhuman and degrading treatment of all U.S. detainees, including those in CIA custody.

Also in the fall of 2005, the U.S. Supreme Court heard a case involving the legal rights of detainees held at Guantanamo Bay Naval Base. It decided in June 2006 that al Qaeda prisoners are protected by the Geneva Conventions' prohibitions of torture and cruel treatment.

At the time, the CIA also was worried that its operatives involved in prisoner interrogation might be subject to legal charges involving treatment of detainees. Some agency employees have bought liability insurance as a hedge against that possibility.

The decision to destroy the tapes was made by Jose Rodriguez, then the head of the CIA's clandestine directorate of operations

under CIA Director Porter Goss.

Hayden said members of the congressional intelligence committees were made aware in February 2003 both of the tapes and the CIA's ultimate plan to destroy them. That claim was denied by several members of the panels, including Republican Rep. Peter Hoekstra, who at the time was chairman of the House Intelligence Committee.

The Senate Intelligence Committee did not learn of the tapes' destruction until November 2006, and Chairman Jay Rockefeller, who then was the ranking minority member on the committee, said he was not told in 2003 of the plan to destroy them. The House Intelligence Committee learned of the tapes' destruction in March 2007.

Republicans were mostly silent about the CIA disclosure. McCain, a presidential candidate, said while campaigning in New Hampshire Friday that he would not side with the Democrats' calls for an investigation because he believed the CIA's actions were legal.

"That doesn't mean I like it," McCain added.

"Of course I object to it," he said of the tapes being destroyed. "Right now, our intelligence agencies need credibility, and this is not helpful to that."

At least one of the tapes showed the interrogations of Abu Zubaydah, the first high-value detainee taken by the CIA in 2002. Zubaydah, under harsh questioning, told CIA interrogators about Ramzi Binalshibh, the alleged accomplice in the Sept. 11, 2001, terror attacks, Bush said publicly in 2006. The two men's confessions also led to the capture of Khalid Sheikh Mohammed, whom the U.S. government said was the mastermind behind the Sept. 11 attacks.

Hayden told agency employees the interrogations were legal, and said the tapes were not relevant to "any internal, legislative or judicial inquiries."

Lawyers for U.S. detainees believe otherwise.

The Center for Constitutional Rights, which coordinates the work of all attorneys representing U.S. prisoners held at Guantanamo Bay Naval Base, says the CIA may have destroyed crucial evidence a court said it was entitled to in 2004.

The center said Friday it is now "deeply concerned" the CIA may have destroyed evidence relating to Majid Khan, a former CIA detainee now held at Guantanamo.

Amnesty International, another prominent global human rights organization that regularly criticizes the U.S. government's secret detention and interrogation practices, also sharply criticized the tapes destruction.

"It falls into a pattern of measures that have been taken that obstruct accountability for human rights violations," Amnesty spokesman Rob Freer told **CBS News reporter Larry Miller**.

Revelations about the tapes also may affect current terror trials.

Convicted terror conspirator Jose Padilla's lawyers claimed in a Florida federal court that Abu Zubaydah was tortured into saying Padilla was an al Qaeda associate. The Justice Department dismissed Padilla's allegations as "meritless," saying Padilla's legal team could not prove that Abu Zubaydah had been tortured.

Padilla and his two co-defendants will be sentenced next month. They face life in prison on three terror-related convictions.

Then-U.S. District Judge Mukasey, now attorney general, signed the warrant used by the FBI to arrest Padilla in May 2002. That warrant relied in part on information obtained from Abu Zubaydah, court records show.

In a separate case, attorneys for al Qaeda conspirator Zacarias Moussaoui in 2003 began seeking videotapes of interrogations they believed might help their client. In November 2005 a federal judge ordered the government to disclose whether it had video or audio tapes of specific interrogations. Eleven days later, the government denied it had them.

Gerald Zerkin, one of Moussaoui's lawyers in the penalty phase of his trial, recalled some of the defense efforts to obtain testimony from or video or audio tapes of the interrogations of top al Qaeda detainees. "Obviously the important witnesses included Zubaydah, Binalshibh and KSM (Khalid Sheikh Mohammed). ... Those are the guys at the head of the witness list," Zerkin said. He could not recall specifically which tapes he requested or the phrasing of his discovery requests, which he said were probably still classified.

The tapes also were not provided to the special commission that studied government actions before and after the 2001 attacks. The commission relied heavily on intelligence reports about Abu Zubaydah and Binalshibh's 2002 interrogations. CIA spokesman Mark Mansfield said the agency did not subvert the 9/11 commission's work.

"Because it was thought the commission could ask about tapes at some point," he said, "they were not destroyed while the commission was active."

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