

Probe begins in trashing of tapes

A CIA unit and the Justice Dept. are joining forces as new questions arise in the detainee-interrogation case.

By Mark Mazzetti and David Johnston

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WASHINGTON — The Justice Department and the CIA's internal watchdog unit yesterday 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 in the CIA were involved in the decision to destroy the videotapes, which showed severe interrogation methods used on two al-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 CIA's national clandestine service, known as the Directorate of Operations until 2005.

Yesterday, a government official who had spoken with Rodriguez said that Rodriguez told him he had received approval from lawyers inside the CIA 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 CIA 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 prosecutions of Abu Zubaydah and others.

Rizzo's position, together with the fact that the CIA inspector general, John L. Helgeson, is now examining the matter, indicates a greater level of concern at the agency over the destruction than Gen. Michael V. Hayden, the CIA director, indicated in his message to agency employees on Thursday.

In a statement yesterday, Hayden said that he welcomed the inquiry and that the "CIA will cooperate fully."

Investigators will begin the inquiry to determine whether or not a full investigation is warranted. If it is determined that any agency employee broke the law, the standard procedure would be for Helgeson to issue a criminal referral to the Justice Department.

The investigation comes after the Senate and House intelligence committees started their own investigations into the destruction of the tapes. In a statement yesterday, the chairman of the House intelligence committee, Rep. Silvestre Reyes (D., Texas), said the inquiry would be an "important first test" for Attorney General Michael B. Mukasey to demonstrate his independence.

In a letter to the CIA yesterday, Assistant Attorney General Kenneth L. Wainstein requested to meet with Helgeson and Rizzo early this week to discuss the inquiry. Rodriguez could not be reached for comment yesterday.

Officials have acknowledged that the destruction of evidence like videotaped interrogations could raise questions about whether the CIA

was seeking to hide evidence of coercion. A review of records from military tribunals indicates that five lower-level detainees at Guantanamo Bay, Cuba, were initially charged with offenses based on information provided by or related to Abu Zubaydah.

Military defense lawyers said the fact that interrogation tapes were destroyed could provide a way to challenge other cases that may be based on information from Abu Zubaydah, a close aide to Osama bin Laden, though such challenges would face major legal obstacles under the current rules for military prosecutions.

They said the defense could argue that the tapes might have raised questions about whether the information was believable or whether Abu Zubaydah had invented it simply to stop aggressive interrogation techniques.

Col. Steven David, the chief military defense lawyer for the Guantanamo war crimes cases, said at a trial: "The inference is they destroyed it because it was bad for them."

He said the disclosure of the destroyed tapes "raises serious concerns" about other potential prosecutions, but it was too early to say how many, or how serious the damage might be.

Meanwhile, attorneys for a detainee who had been in CIA custody for three years released documents yesterday in which they asked a federal court to prevent the U.S. government from destroying evidence of his torture.

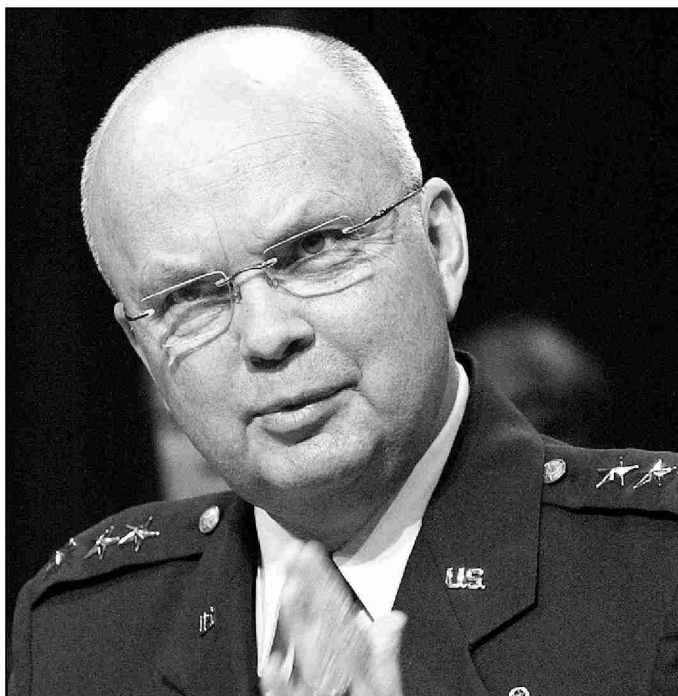
The filing, on behalf of Guantanamo Bay detainee Majid Khan, one of 14 "high-value detainees" brought to the military prison from secret sites in other countries, came a week before the CIA acknowledged that it had destroyed the interrogation videotapes.

Lawyers with the Center



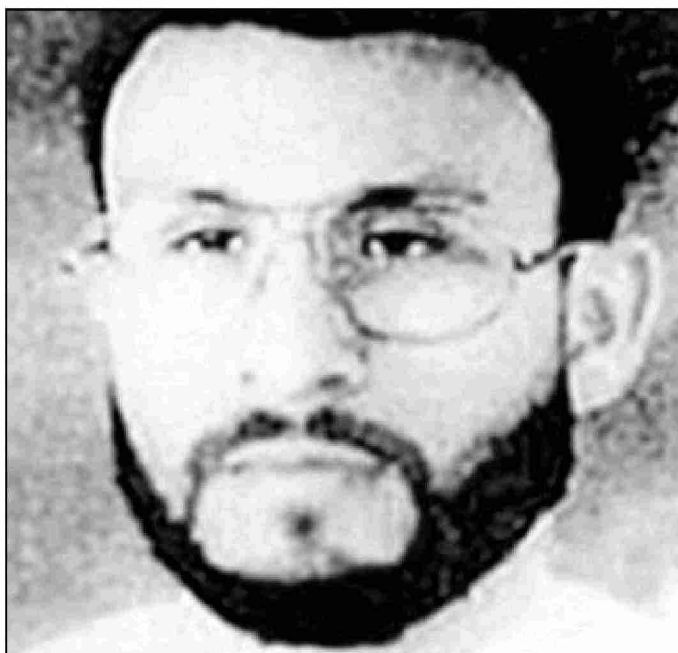
for Constitutional Rights who represent Khan said they feared that the CIA and other U.S. agencies also destroyed evidence in their client's case, and they argued in a 24-page filing with the U.S. Court of Appeals for the District of Columbia Circuit that Khan was subjected to systematic torture.

"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.



DENNIS COOK / Associated Press

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The tapes showed showed severe interrogation methods being employed on Abu Zubaydah and another al-Qaeda suspect.