

# Justice, CIA Begin Videotape Inquiry

*Spy Agency Asked to Preserve Evidence Related to Destroyed Interrogation Records*

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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 detain-

ees" 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.

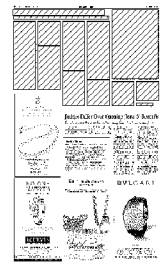
The U.S. government alleges that Khan, 27, who grew up in the Baltimore area and was arrested in Pakistan in March 2003, was part of the al-Qaeda terror network and was scouting ways to attack the United States while living here.

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.*



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.**