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December 13, 2007

Worldview Commentary No. 273 on Chicago Public Radio, 91.5 FM WBEZ

“CIA Torture: Destroying the Evidence”

What next? Not only did the CIA torture at least two Al Qaeda prisoners, but the agency apparently violated federal court orders by destroying the videotapes of its torture sessions. How much lower can we sink?

Alas, we probably have not hit bottom yet. Following Wednesday’s closed hearing before the House Intelligence Committee, Chairman Silvestre Reyes termed portions of classified testimony by CIA director General Michael Hayden “stunning.”

Inquiries are now underway by House and Senate committees, the Justice Department and the CIA Inspector General. The American Civil Liberties Union has asked a federal judge in New York to hold the CIA in contempt for violating a 2004 court order requiring the agency to retain and identify materials relating to treatment of detainees in CIA custody.

What we know already is troubling enough. General Hayden acknowledges that the videotapes were made in 2002 and destroyed in November 2005. His public explanation for the destruction of the tapes, which occurred before he took over the agency, is that they were “no longer of intelligence value and not relevant to any internal, legislative or judicial inquiries.”

With all due respect, General Hayden insults our intelligence.

The timing is revealing. In 2002 the CIA got the green light, by way of the infamous “torture memo” penned by Justice Department lawyer John Yoo, to use any interrogation technique that fell short of causing death, limb removal or organ failure.

In 2004, following revelations of abuse of prisoners by American guards and interrogators at the Abu Ghraib prison in Iraq, the Justice Department withdrew the Yoo memo, replacing it with another, more restrictive memo.

In the fall of 2005, Senator John McCain – a former victim of torture while a prisoner of war in Vietnam – pushed legislation to prohibit all US agencies from torturing prisoners. In October 2005, Vice President Cheney lobbied hard for an exemption for the CIA. McCain refused.

The following month – November 2005 – CIA chief of operations Jose Rodriguez reportedly authorized destruction of the tapes. One month later, Congress passed and the President signed the McCain bill – the Detainee Treatment Act of 2005 – with no exemption for the CIA.

So why did Rodriguez decide, in November 2005, to destroy the tapes? Why did the three-year-old tapes suddenly “lose intelligence value”? If General Hayden cannot solve this mystery, he may want to take a refresher course in intelligence analysis.

What remains unclear is who authorized or acquiesced in the destruction. Some news reports portray Rodriguez as a lone wolf, destroying the evidence on his own, despite prior objections from White House and Justice Department lawyers, and even from then CIA Director Porter Goss and CIA General Counsel John Rizzo, neither of whom was notified in advance of the destruction. But if Rodriguez breached orders or policy, why was he not subsequently fired or disciplined?

Other reports say that he got the okay from lawyers in his own operations directorate within the CIA. But if so, who is running the CIA? Individual fiefdoms or the director? And how did his lawyers manage to overlook the New York court order in the ACLU case?

All these questions need answers.

Then there is the matter of the torture. Former CIA officials, including one John Kiriakou, who served as a CIA interrogator in Pakistan and who has spoken publicly, have told the news media that at least one of the two Al Qaeda operatives, Abu Zubaydah, was subjected not only to waterboarding – simulated drowning – but also, in combination, to undue noise, painful stress positions and isolation.

Asked if waterboarding amounts to torture, Attorney General Mukasey says that he is still studying the matter. But the rest of the world has long since figured out the answer. The Spanish Inquisition was especially fond of the technique. There is no serious question under international law that if the CIA in fact used waterboarding, even by itself, let alone in combination with the other techniques, it engaged in torture.

The next question is who authorized the torture. “It’s no secret,” says White House spokesman Dana Perino, “that the President approved a lawful program in order to interrogate hardened terrorists.” Perino adds, “We don’t torture.”

But it seems that we did, and then we destroyed the evidence. The Commander in Chief sounds less than determined to get to the bottom – or the top – of this seeming criminal conspiracy. Asked by ABC News for comment, he ventured, “It will be interesting to know what the true facts are.”

So it will. But for starters, General Hayden and Attorney General Mukasey, let’s stop pretending that we don’t know whether we tortured, or why we destroyed the evidence when we did. Once that smoke is blown away, we can start asking the serious questions – of which there are many.

Doug Cassel’s commentaries are generally broadcast Wednesdays during the noon hour of the Worldview program on Chicago Public Radio, 91.5 FM, and rebroadcast at 9 PM in the evening. Views expressed are personal views of the author and not necessarily those of Notre Dame Law School, the Center for Civil and Human Rights or Chicago Public Radio.