

EXHIBIT 39

Sender: Behnke, Stephen </O=APA/OU=DC/CN=RECIPIENTS/CN=SVB>
Sent: Wednesday, November 09, 2005 2:54:38 PM
Recipient: Farberman, Rhea <rfarberman@apa.org>; Kelly, Heather <hkelly@apa.org>; Mumford, Geoff <gmumford@apa.org>; Breckler, Steve <SBreckler@apa.org>; Garrison, Ellen <egarrison@apa.org>; Levitt, Nina <nlevitt@apa.org>; Tomes, Henry <htomes@apa.org>; Belar, Cynthia <CBelar@apa.org>; Gilfoyle, Nathalie <ngilfoyle@apa.org>; Anderson, Norman <NAnderson@apa.org>; Newman, Russ <rnewman@apa.org>; Honaker, Michael <mhonaker@apa.org>; Keita, Gwen <gkeita@apa.org>
Subject: RE: NYT Article

It is only a matter of time.

-----Original Message-----

From: Farberman, Rhea
Sent: Wednesday, November 09, 2005 2:18 PM
To: Kelly, Heather; Mumford, Geoff; Breckler, Steve; Garrison, Ellen; Levitt, Nina; Tomes, Henry; Belar, Cynthia; Gilfoyle, Nathalie; Anderson, Norman; Newman, Russ; Honaker, Michael; Keita, Gwen
Cc: Behnke, Stephen
Subject: RE: NYT Article

Just FYI – **no calls on this so far.**
Rhea

From: Kelly, Heather
Sent: Wednesday, November 09, 2005 10:00 AM
To: Mumford, Geoff; Breckler, Steve; Garrison, Ellen; Levitt, Nina; Farberman, Rhea; Tomes, Henry; Belar, Cynthia; Gilfoyle, Nathalie; Anderson, Norman; Newman, Russ; Honaker, Michael; Keita, Gwen
Cc: Behnke, Stephen
Subject: FW: NYT Article

Good morning, wanted to make sure you'd all seen this from today's New York Times – read down halfway to see the potentially bad sentence for us in bold type.
Heather

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From: Paul Rocklin [<mailto:PRocklin@phrusa.org>]
Sent: Wednesday, November 09, 2005 9:25 AM
To: Behnke, Stephen; Kelly, Heather
Subject: NYT Article

Dear Steve and Heather,

You've probably seen this story in today's New York Times but here it is, just in case. The sentence that may be of greatest concern to APA reads: "The list of 10 techniques, including feigned drowning, was secretly drawn up in early 2002 by a team that included senior C.I.A. officials who solicited recommendations from foreign governments and from agency psychologists, the officials said."

Hope you are well,

Paul

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November 9, 2005

Classified Report Warned on C.I.A.'s Tactics in Interrogation

By DOUGLAS JEHL

WASHINGTON, Nov. 8 - A classified report issued last year by the Central Intelligence Agency's inspector general warned that interrogation procedures approved by the C.I.A. after the Sept. 11 attacks might violate some provisions of the international Convention Against Torture, current and former intelligence officials say.

The previously undisclosed findings from the report, which was completed in the spring of 2004, reflected deep unease within the C.I.A. about the interrogation procedures, the officials said. A list of 10 techniques authorized early in 2002 for use against terror suspects included one known as waterboarding, and went well beyond those authorized by the military for use on prisoners of war.

The convention, which was drafted by the United Nations, bans torture, which is defined as the infliction of "severe" physical or mental pain or suffering, and prohibits lesser abuses that fall short of torture if they are "cruel, inhuman or degrading." The United States is a signatory, but with some reservations set when it was ratified by the Senate in 1994.

The report, by John L. Helgerson, the C.I.A.'s inspector general, did not conclude that the techniques constituted torture, which is also prohibited under American law, the officials said. But Mr. Helgerson did find, the officials said, that the techniques appeared to constitute cruel, inhuman and degrading treatment under the convention.

The agency said in a written statement in March that "all approved interrogation techniques, both past and present, are lawful and do not constitute torture." It reaffirmed that statement on Tuesday, but would not comment on any classified report issued by Mr. Helgerson. The statement in March did not specifically address techniques that could be labeled cruel, inhuman or degrading, and which are not explicitly prohibited in American law.

The officials who described the report said it discussed particular techniques used by the C.I.A. against particular prisoners, including about three dozen terror suspects being held by the agency in secret locations around the world. They said it referred in particular to the treatment of Khalid Sheikh Mohammed, who is said to have organized the Sept. 11 attacks and who has been detained in a secret location by the C.I.A. since he was captured in March 2003. Mr. Mohammed is among those believed to have been subjected to waterboarding, in which a prisoner is strapped to a board and made to believe that he is drowning.

In his report, Mr. Helgerson also raised concern about whether the use of the techniques could expose agency officers to legal liability, the officials said. They said the report expressed skepticism about the Bush administration view that any ban on cruel, inhuman and degrading treatment under the treaty does not apply to C.I.A. interrogations because they take place overseas on people who are not citizens of the United States.

The current and former intelligence officials who described Mr. Helgerson's report include supporters and critics of his findings. None would agree to be identified by name, and none would describe his conclusions in specific detail. They said the report had included 10 recommendations for changes in the agency's handling of terror suspects, but they would not say what those recommendations were.

Porter J. Goss, the C.I.A. director, testified this year that eight of the report's recommendations had been accepted, but did not describe them. The inspector general is an independent official whose auditing role at the agency was established by Congress, but whose reports to the agency's director are not binding.

Some former intelligence officials said the inspector general's findings had been vigorously disputed by the agency's general counsel. To date, the Justice Department has brought charges against only one C.I.A. employee in connection with prisoner abuse, and prosecutors have signaled that they are unlikely to bring charges against C.I.A. officers in several other cases involving the mishandling of prisoners in Iraq and Afghanistan.

But the current and former intelligence officials said Mr. Helgerson's report had added to apprehensions within the agency about gray areas in the rules surrounding interrogation procedures.

"The ambiguity in the law must cause nightmares for intelligence officers who are engaged in aggressive interrogations of Al Qaeda suspects and other terrorism suspects," said John Radsan, a former assistant general counsel at the agency who left in 2004. Mr. Radsan, now an associate professor at William Mitchell College of Law in St. Paul, would not comment on Mr. Helgerson's report.

Congressional officials said the report had emerged as an unstated backdrop in the debate now under way on Capitol Hill over whether the C.I.A. should be subjected to the same strict rules on interrogation that the military is required to follow. In opposing an amendment sponsored by Senator John McCain, Republican of Arizona, Mr. Goss and Vice President Dick Cheney have argued that the C.I.A. should be granted an exemption allowing it extra latitude, subject to presidential authorization, in interrogating high-level terrorists abroad who might have knowledge about future attacks.

The issue of the agency's treatment of detainees arose shortly after the attacks of Sept. 11, after C.I.A. officers became involved in interrogating prisoners caught in Afghanistan, and the agency sought legal guidance on how far its employees and contractors could go in interrogating terror suspects, current and former intelligence officials said.

The list of 10 techniques, including feigned drowning, was secretly drawn up in early 2002 by a team that included senior C.I.A. officials who solicited recommendations from foreign governments and from agency psychologists, the officials said. They said officials from the Justice Department and the National Security Council, which is part of the White House, were involved in the process.

Among the few known documents that address interrogation procedures and that have been made public is an August 2002 legal opinion by the Justice Department, which said that interrogation methods just short of those that might cause pain comparable to "organ failure, impairment of bodily function or even

death" could be allowable without being considered torture. The administration disavowed that classified legal opinion in the summer of 2004 after it was publicly disclosed.

A new opinion made public in December 2004 and, signed by James B. Comey, then the deputy attorney general, explicitly rejected torture and adopted more restrictive standards to define it. But a cryptic footnote to the new document about the "treatment of detainees" referred to what the officials said were other still-classified opinions. Officials have said that the footnote meant that coercive techniques approved by the Justice Department under the looser interpretation of the torture statutes were still lawful even under the new, more restrictive standards.

It remains unclear whether all 10 of the so-called enhanced procedures approved in early 2002 remain authorized for use by the C.I.A. In an unclassified report this summer, the Senate Intelligence Committee referred briefly to Mr. Helgerson's report and said that the agency had fully put in effect only 5 of his 10 recommendations. But in testimony before Congress in February Mr. Goss said that eight had.

Some former intelligence officials have said the C.I.A. imposed tighter safeguards on its interrogation procedures after the abuses at Abu Ghraib prison came to light in May 2004. That was about the same time Mr. Helgerson completed his report.

The agency issued its earlier statement on the legality of approved interrogation techniques after Mr. Goss, in testimony before Congress on March 17, said that all interrogation techniques used "at this time" were legal but declined, when asked, to make the same broad assertion about practices used over the past few years.

On March 18, Jennifer Millerwise Dyck, the agency's director of public affairs, said that "C.I.A. policies on interrogation have always followed legal guidance from the Department of Justice."

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