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A cold-war case of CIA detention still echoes

By Warren Richey Tue Jan 8, 3:00 AM ET

Behind the debate over the Central Intelligence Agency's destruction of videotapes depicting waterboarding and other harsh interrogation techniques lies a fundamental question: Can government officials use such aggressive tactics without violating US law?

No American court has yet ruled on the legality of Bush administration interrogation policies. But the war on terror isn't the first time US officials have used harsh methods to try to "break" a detainee.

From 1964 to 1967, Soviet defector Yuri Nosenko was subjected to extreme isolation and sensory deprivation and was administered drugs because his CIA handlers believed he was still working in secret for the KGB. They imprisoned him in a windowless concrete cell to try to disrupt him psychologically and force him to confess his loyalty to Moscow, according to CIA documents and a congressional investigation. He never did.

The case has been examined in several books – one was published last year – and a 1986 movie depicting the intense debate over whether Mr. Nosenko was an actual defector. Lost in much of the discussion has been the legality of his treatment.

"It was reprehensible," says Stansfield Turner, who headed the CIA from 1977 to 1981 and ordered an internal examination of the Nosenko affair in 1977. "I was aghast when I uncovered it."

Nosenko's experience in CIA custody in the 1960s is relevant today because of similarities between his harsh treatment and the use of some of the same techniques now, more than 40 years later, against suspected Islamic terrorists. Among them are three men who were held at the military brig in Charleston, S.C., after being designated as enemy combatants by President Bush.

Like Nosenko, all three men – Yasser Hamdi, Jose Padilla, and Ali Saleh al-Marri – were held in isolation cells in the United States with minimal human contact for three years or more in an attempt to force confessions by disrupting their ability to maintain rational thought, according to interrogation specialists and mental-health experts.

Although the US Supreme Court in 2004 upheld the president's authority to order the military detention of enemy combatants, no US judge has ever ruled on the legality of using severe isolation as an interrogation technique. It remains unresolved even as the Supreme Court weighs the

legal rights of foreign terror detainees at the US naval base in Guantánamo Bay, Cuba, and as the Justice Department undertakes a criminal investigation of the CIA's destruction of tapes documenting the use of harsh interrogation methods.

Now 80, Nosenko lives in the US under an assumed name. He was contacted by the Monitor through an intermediary but declined to be interviewed for this story.

An 'increasingly concerned' CIA One indication of the CIA's own assessment of the legality of Nosenko's treatment was revealed last June, when the agency released documents concerning some of its once-secret operations.

"This office [CIA's Office of Security] together with the [CIA's] Office of General Counsel became increasingly concerned with the illegality of the agency's position in handling a defector [Nosenko] under these conditions for such a long period of time," states a memo dated 16 May 1973, nearly six years after Nosenko was released.

The memo is in sharp contrast to the 1978 congressional testimony of former CIA Director Richard Helms, who ran the agency at the end of Nosenko's detention. He was asked who gave legal authorization for the CIA to hold a KGB defector in an isolation cell for 1,277 days with no charges filed and no access to a lawyer or the courts. Mr. Helms said then-Deputy Attorney General Nicholas Katzenbach had authorized it. But Mr. Katzenbach told the congressional panel that he would never have given such legal advice.

In a recent telephone interview, Katzenbach said the CIA never shared with him any details of Nosenko's treatment. "All they were talking about was the amount of time he was being held, which was harsh," he says.

Katzenbach, who later served as attorney general in the Johnson administration, says the intelligence agency was operating under its own rules. "The CIA had no authority to question anybody any differently than the FBI or the local police force," he says.

The legality of Nosenko's treatment in the 1960s was never tested in court in part because Nosenko later waived his right to sue the US government over his detention and treatment. After his release, the agency declared Nosenko a bona fide defector, paid him \$175,000, and hired him for \$35,000 a year as a consultant. In 1974, he became a US citizen.

As with the Nosenko affair, the US government is working to avoid judicial scrutiny of interrogations of terror suspects. Former enemy combatant Yasser Hamdi was released in 2004 and is now living freely in Saudi Arabia after signing an agreement not to sue the US government over his treatment.

In contrast, lawyers working on behalf of the other two Charleston detainees, Mr. Padilla and Mr. Marri, have filed civil lawsuits claiming their clients were tortured in the military prison. Lawyers for Padilla also filed a second suit Friday in San Francisco against former Justice Department lawyer John Yoo. The suit says Mr. Yoo was a legal architect of the Bush administration's harsh interrogation policies that were "intended to destroy Mr. Padilla's ordinary emotional and cognitive functioning ... to extract from him potentially self-incriminating information."

Padilla has been diagnosed with significant mental disabilities stemming from his three years and seven months in the Charleston brig. He was convicted last summer in a terror conspiracy trial in Miami. On Tuesday, a federal judge begins a week-long hearing to consider whether Padilla should receive a more lenient sentence because of his harsh treatment at the brig. Federal prosecutors want Padilla sentenced to life in prison without the possibility of parole.

Marri remains in an isolation cell at the brig, but his conditions of confinement have eased since 2005. A federal appeals court in Richmond, Va., is currently examining the constitutionality of Marri's detention, though not the legality of the interrogation techniques used against him. A ruling is expected soon.

One common thread running through all four men's stories is a perceived need by the government to quickly extract information deemed essential to protect US national security.

"One of the difficulties with this kind of issue is that it is a slippery slope," says Katzenbach. "If you can put somebody in isolation for 24 hours, why not 48, why not a week?"

Mr. Turner agrees. "There is a very tough line here. What if you really think that by torturing somebody you are going to prevent a major catastrophe?" he asks. "My inclination is that you have to stick by your moral principles and put constitutional rights of individuals first regardless of the circumstance." But the former CIA director says the US government should not rule out any particular technique or tactic, nor should it adopt procedures automatically allowing such tactics.

A real defector from the Soviet KGB? In the Nosenko case, the stakes were enormous, coming at the height of the cold war. Nosenko's interrogation began in April 1964 after a group of CIA officials became suspicious that Nosenko might not be a genuine defector. They thought he was sent by the KGB to throw the CIA off the trail of Soviet moles who they feared had penetrated America's spy network. In addition, they thought he was sent by Moscow to insulate the KGB from any connection to Lee Harvey Oswald. Mr. Oswald assassinated President John Kennedy in November 1963.

Nosenko was held for three years in extreme isolation, first in a locked attic room in a CIA safe house in Clinton, Md. Later he was transferred to a specially built windowless concrete cell at Camp Peary, the CIA training facility near Williamsburg, Va.

He was questioned and requestioned about whether the KGB had ever approached Oswald during the three years Oswald lived in the Soviet Union prior to the Kennedy assassination. Nosenko said he had personally reviewed Oswald's KGB file and that, while the KGB had conducted surveillance of Oswald, it had never tried to recruit him.

This issue was critical because KGB involvement with Oswald might suggest Soviet involvement in the Kennedy assassination – a prospect that could have propelled the cold war into a nuclear war.

Nosenko insisted that Oswald was a "nut" and that the Soviets had deemed him unsuitable for intelligence work.

Some CIA officials were sure Nosenko was lying and was part of a larger Soviet operation. But how to make him talk? He was a trained KGB officer who knew how to resist interrogation.

According to a CIA internal investigation, agents decided to use the Soviet Union's own techniques against him. They treated him precisely as the KGB had treated Yale University professor Frederick Barghoorn, who had been arrested in Moscow on trumped-up spy charges to set up a potential swap for a genuine Soviet spy nabbed in New York. The KGB held the professor for 16 days in October 1963 before the intervention of his friend, President Kennedy, won his release.

Isolation to 'break' Nosenko
Nosenko's cell built at Camp Peary contained a metal bed bolted to the floor, a foam mattress, one light bulb, and a television camera. There were no windows. No sheets or blankets. No reading material. Just four soundproof, concrete walls – a replica of a Soviet detention cell.

"To say it was a nightmare is not enough. It was hell," Nosenko told CIA employees in a 1998 speech.

The guards were instructed not to speak with him or acknowledge his presence. They watched him via television 24 hours a day.

Such conditions of confinement are described in a 1956 US government-funded secret report titled "Communist Control Techniques." It discusses how the Soviets used prolonged isolation and sensory deprivation to drive detainees to the brink of insanity and condition them to confess. Isolation can work as a kind of tightening vise on the psyche, according to the report. Prison guards estimated that the average detainee "broke" in four to six weeks.

By then, a detainee loses "many of the restraints of ordinary behavior," the report says. "He may soil himself. He weeps, he mutters, and he prays aloud in his cell. He follows the orders of the guard with the docility of a trained animal. Indeed, the guards say that such prisoners are 'reduced to animals.' "

But there are exceptions. "Those convinced of their innocence and familiar with KGB methods may be able to stand up under isolation for a long time," the report says.

Nosenko told CIA employees in his 1998 speech that one way he survived the mental strain of isolation was by keeping his mind active. Twice he created a chess set out of threads pulled from his clothes. Twice the guards confiscated it. Once he found a piece of paper in a toothpaste box listing ingredients. Excited to have something to read, he tried to position himself away from the TV camera so the guards wouldn't see that he was reading. They confiscated that, too, he said in the speech.

When his mind began to deteriorate, Nosenko said he fought back by yelling and complaining. Finally, his jailers gave him a blanket. Later they let him go outside into a small exercise cage where he could see the sky.

At one point, he said, he was given LSD and it almost killed him. The guards revived him by dragging him into the shower and alternating the water between hot and cold.

Former CIA Director Helms told a congressional hearing in 1978 that a request had been made to use certain drugs against Nosenko to make him talk. He said he refused to allow it. In contrast, Turner wrote in his 1985 book "Secrecy and Democracy" that Nosenko was administered drugs on 17 occasions in an attempt to make him talk.

Turner ordered an investigation of the Nosenko matter and released its findings to the House Select Committee on Assassinations. Included was a memo written one month before Nosenko was placed in isolation. It outlined a plan for "hostile interrogation." It noted: "Subject must be broken at some point if we are to learn something of the full scope of the KGB plan."

CIA investigators also recovered notes said to have been written near the end of the detention, outlining possible ways to end and cover up the Nosenko affair. The objective: "to liquidate & insofar as possible to clean up traces of a sitn in which CIA cd be accused of illegally holding Nosenko." Among the options were to "liquidate the man," "render him incapable of giving coherent story (special dose of drug etc.)," and "commitment to loony bin w/out making him nuts."

In his 2007 book "Spy Wars," former CIA officer Tennent Bagley acknowledges that he wrote the notes but says he had no murderous intent. He says in his book that he was merely "giving vent to frustration in the way a baseball fan might shout, 'Kill the umpire!'" Suggestions of killing Nosenko or rendering him crazy were "impossible and impractical," he writes. He still believes Nosenko was a Soviet plant, decades after the CIA formally embraced him as a bona fide defector.

For his part, Nosenko has said that while he was angry about his treatment, he never blamed the CIA. Instead, it was a small group of CIA officers whom he calls "the ugly ones."

In his 1998 speech, Nosenko urged young intelligence officers to "never allow a repeat of such cases." Defectors should be allowed to remain free but kept under tight surveillance, he said. Locking people up under "ugly conditions" achieves nothing, he said.

Nosenko ended that speech by telling his audience that he came to the US in 1964 but that his life in America began in 1969. "I love this country," he said. "I am a very proud American."

To the chagrin of Mr. Bagley, Nosenko's former handler, they gave him a standing ovation.

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