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HEADLINE: Waterboarding Focus of Inquiry By Justice Dept.

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BODY:

The Justice Department revealed Friday that its internal ethics office was investigating the department's legal approval for waterboarding of Qaeda suspects by the Central Intelligence Agency and was likely to make public an unclassified version of its report.

The disclosure by H. Marshall Jarrett, the head of the department's Office of Professional Responsibility, was the first official acknowledgment of an internal review of the legal memorandums the department has issued since 2002 that authorized waterboarding and other harsh interrogation methods.

Mr. Jarrett's report could become the first public accounting for legal advice that endorsed methods widely denounced as torture by human rights groups and legal authorities. His office can refer matters for criminal prosecution; legal experts said the most likely outcome was a public critique of the legal opinions on interrogation, noting that Mr. Jarrett had the power to reprimand or to seek the disbarment of current or former Justice Department lawyers.

The cloak of secrecy that long concealed the C.I.A.'s secret interrogation program and its legal underpinnings has gradually broken down.

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The C.I.A. director, Gen. Michael V. Hayden, publicly admitted for the first time two weeks ago that the agency used waterboarding in 2002 and 2003 in the interrogation of three Qaeda suspects but said that the technique was no longer used, and its legality under current law is uncertain. The technique, which has been used since the Spanish Inquisition and has been found illegal in the past by American courts, involves water poured into the nose and mouth to create a feeling of drowning.

After General Hayden's acknowledgment, Attorney General Michael B. Mukasey rebuffed demands for a criminal investigation of interrogators who used waterboarding or of their superiors, saying C.I.A. officers could not be prosecuted for actions the Justice Department had advised them were legal. Mr. Jarrett's review focuses on the government lawyers who gave that advice.

Mr. Jarrett's disclosure came as prosecutors and F.B.I. agents conduct a criminal investigation of the C.I.A.'s destruction in 2005 of videotapes of harsh interrogations and a week after Congress passed a ban on coercive interrogations, which President Bush has said he will veto.

Mr. Jarrett did not say when his investigation might conclude. He did not respond to a request on Friday for an interview.

In a letter to two Democratic senators, Richard J. Durbin of Illinois and Sheldon Whitehouse of Rhode Island, Mr. Jarrett wrote that the legal advice approving waterboarding was one subject of an investigation into "the circumstances surrounding the drafting" of a Justice legal memorandum dated Aug. 1, 2002.

The document declared that interrogation methods were not torture unless they produced pain equivalent to that produced by organ failure or death. The memorandum, drafted by a Justice Department lawyer, John Yoo, and signed by Jay S. Bybee, then head of the department's Office of Legal Counsel, was withdrawn in 2004.

Mr. Jarrett said the investigation was also covering "related" legal memorandums prepared by the Office of Legal Counsel since 2002. That suggested the investigation would address still-secret legal opinions written in 2005 by Steven G. Bradbury, then and now the acting head of the Office of Legal Counsel, that gave legal approval for waterboarding and other tough methods, even when used in combination.

Mr. Jarrett said his office was "examining whether the legal advice in these memoranda was consistent with the professional standards that apply to Department of Justice attorneys."

"Because of the significant public interest in this matter, O.P.R. will consider releasing to Congress and the public a non-

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classified summary of our final report,' Mr. Jarrett wrote, using the initials for the Office of Professional Responsibility.

Justice Department officials said that the O.P.R. inquiry began more than three years ago and noted that it was mentioned in a Newsweek article in December 2004. It has since been expanded, the officials said, to cover more recent legal opinions on interrogation.

Mr. Jarrett's letter, dated Monday, came in reply to a Feb. 12 letter from Mr. Durbin and Mr. Whitehouse to him and the Justice Department's inspector general, Glenn A. Fine, seeking an investigation into the department's legal approval of waterboarding.

'Despite the virtually unanimous consensus of legal scholars and the overwhelming weight of legal precedent that waterboarding is illegal,' the senators wrote, 'certain Justice Department officials, operating behind a veil of secrecy, concluded that the use of waterboarding is lawful. We believe it is appropriate for you to investigate the conduct of these Justice Department officials.'

Mr. Fine replied in a letter this week that the law gave Mr. Jarrett's office responsibility for reviewing the actions of department lawyers providing legal advice. Mr. Jarrett confirmed that his office was investigating.

Mr. Jarrett reports to the attorney general and oversees only the professional conduct of Justice Department attorneys. He does not enjoy the independence or authority of Mr. Fine, who covers all aspects of Justice operations and also reports to Congress.

In 2006, when Mr. Jarrett tried to look into the Justice Department's role in approving the National Security Agency's domestic surveillance program, Mr. Bush blocked the investigation by denying Mr. Jarrett's investigators the necessary security clearances. Mr. Fine's office subsequently obtained the necessary clearances and began such an investigation.

Last November, days after Mr. Mukasey was confirmed as attorney general, Mr. Bush reversed course and granted clearances to Mr. Jarrett's staffers, who began a delayed review of the legal authorization for the N.S.A. program.

Mr. Durbin and Mr. Whitehouse have been among the most outspoken critics in Congress of harsh interrogation methods. They have called on Mr. Bush to withdraw the nomination of Mr. Bradbury, author of the 2005 interrogation memorandums, as chief of the Office of Legal Counsel; he has filled the job on an acting basis since 2005.

In 2004, Mr. Durbin first proposed a ban on cruel, inhuman and degrading treatment that Congress passed in 2005, when it was sponsored by Senator John McCain, Republican of Arizona.

Mr. Whitehouse, a former United States attorney, said in an interview that he believed the August 2002 memo on torture, as well as classified opinions he had reviewed, fell far short of the Justice Department's standards for scholarship. He said that in approving waterboarding, the opinions ignored both American military prosecutors' cases against Japanese officers for waterboarding American prisoners during World War II and a federal appeals court's decision that upheld the 1983 conviction of a Texas sheriff for using "'water torture'" on jail inmates.

"I'm very, very pleased that the Office of Professional Responsibility is looking into this," Mr. Whitehouse said.

Jose Padilla, the American sympathizer of Al Qaeda serving a 17-year sentence for conspiring to help violent Muslim extremists abroad, filed a lawsuit in January against Mr. Yoo, who left Justice in 2003 to return to his job as a law professor at the University of California, Berkeley. The lawsuit claims Mr. Yoo's legal opinions permitted the designation of Mr. Padilla as an enemy combatant and his interrogation using methods that amounted to torture.

Mr. Yoo, who asserted that a president during wartime has extraordinarily broad powers, was a highly influential figure in the Justice Department in the first year after the Sept. 11, 2001, terrorist attacks. His views found favor with Vice President Dick Cheney and his legal adviser, David S. Addington, who shared his views of presidential power.

But some of Mr. Yoo's opinions, including the August 2002 memo on torture, were withdrawn in 2004 after Jack L. Goldsmith took over as head of the Office of Legal Counsel. Mr. Yoo could not be reached for comment Friday.

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GRAPHIC: PHOTO: Steven G. Bradbury, right, who runs the Justice Department office that gave legal approval for waterboarding, at a 2007 ceremony for the departure of Alberto R. Gonzales as attorney general. (PHOTOGRAPH BY MICHAEL TEMCHINE FOR THE NEW YORK TIMES)
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