

HELGERSON'S HINTS

Jason Leopold linked to two interviews with John Helgerson, who as the CIA's former Inspector General, oversaw its investigation into torture. (Fox, Spiegel)

Helgerson and Cheney

The Fox one, perhaps predictably, focuses on Helgerson's reported interactions with Cheney, providing a counterpoint to Jane Mayer's portrayal of discussions between the two men as heated.

"The VP (whom I had long known reasonably well, as, in a non-IG capacity, I used to brief the House Intelligence Committee on a weekly basis when he was an active Member) received me graciously and asked a number of good and appropriate questions. Despite what you may have read elsewhere, he did not attempt in any way whatsoever to intimidate me or influence what we were finding, concluding and recommending," Helgerson wrote in an e-mail to FOX News.

Of course, if Helgerson was briefing the committee regularly during this period, it is likely he was interacting with Addington, then a Counsel on the committee. Also at that time, one of CIA's young lawyers, John Rizzo, was "the Agency's focal point in dealing with the joint congressional committee investigating the Iran-Contra Affair." So, curiously, Cheney, Addington, Rizzo, and Helgerson were probably all involved with the House Intelligence Committee during the Iran-Contra issues.

Given the description he gives of his relationship with Cheney, I'm particularly interested in Helgerson's description of how and why Cheney got a briefing.

"Only infrequently do IG reports take on

such significance that they need to be briefed to the VP, and when this is the case, normally White House or NSC Counsel, or the VP's own staff, receive the material first and then inform the VP as they see fit," he wrote.

Helgerson said that at the time the review had been completed, he and others in the spy agency briefed a number of key parties about the program and the IG's findings. They included members of the White House, the National Security Council, Congress and the Department of Justice.

He said he briefed the vice president because he thought it was "important that he know what was up for a number of reasons, including the elementary bureaucratic fact, for us in the Executive Branch, that the VP should know the same things senior Members in Congress were being told about a program that was as sensitive as this one."

The language here is very vague—perhaps deliberately so. Helgerson seems to suggest that normally, the VP would only be briefed if someone at NSC—presumably, the National Security Advisor—believed the VP needed to be briefed. He even seems to suggest that—in this "normal" scenario—someone from NSC or the White House would do the briefing, not the Inspector General.

The timing here is particularly vague: "at the time the review had been completed" he and others briefed a number of key parties. But here's what that possible timeline looks like:

February 4, 2004: IG Report drafted.

May 7, 2004: IG Report completed.

May 2004: Scott Muller meets with Alberto Gonzales, David Addington, John Bellinger, "and senior Department of

Justice officials" about the IG Report.

May 25, 2004: In a letter to Helgerson, Jack Goldsmith describes having recently received the IG Report from Muller.

Week of June 22, 2004: Muller releases IG Report to Congress.

July 13, 15, 2004: National Clandestine Services and Office of General Counsel brief Jane Harman and Porter Goss, and Jello Jay and Pat Roberts, respectively. According to the notoriously unreliable torture briefing list, OIG participated in the Senate, but not the House, briefing.

In other words, David Addington got briefed on the document some time in May, whereas Congress didn't get the report for another month, and didn't get briefed for yet another month. So the "at the time the review had been completed" describes a time frame of at least two months duration. And presumably, if Cheney hadn't been briefed before the May 2004 meeting with Addington, he was briefed very quickly thereafter.

And the other amusing thing about this passage is that Helgerson doesn't even address the other well-known bureaucratic issues at play here: that Cheney was this program's sponsor, and that he, not the President, was making many of the decisions on it. I can see why you'd have to brief Cheney, as the program's sponsor, well before Jane Harman and Jello Jay found out about the review. Which is the underlying subtext here.

Note, Helgerson says Cheney "did not attempt in any way whatsoever to intimidate me or influence what we were finding, concluding and recommending." In the Spiegel interview, however, he does confirm that those with equities in the review within CIA were given a chance to comment.

Helgerson: It was not easy for another reason. Our review was difficult because of the disorganization of the whole interrogation program. So much was being improvised in those early years in so many locations. There were no guidelines, no oversight, no training. How will you review a program handled differently in so many places in the world? The extended time it took to complete the review was also due to a practice to permit all agency individuals and components who are subjects of our work to review our reports in draft, and to comment on them. Owing to the complexity and sensitivity of this matter, that process took a long time.

At a minimum, this would have included John Rizzo who, after all, led the efforts to get OLC opinions on torture. Given Rizzo's close work and close relationship with Addington, it's pretty certain Addington got a head's up on what was included in the review.

In any case, this seems to support a view that, if some of the tensions and inconsistencies within the IG Report came from Helgerson's interactions with others, it came via CIA personnel, not via Cheney directly.

Oral Authorizations Months Before

Speaking of the authorizations, let's move onto one of the most interesting passages from the Spiegel interview. Helgerson basically confirms what we've long known: that someone gave oral authorization for torture "months before" the August 1, 2002 OLC memo.

SPIEGEL: Abu Zubaydah, a man the CIA considered to be a key player in al-Qaida, was captured in March 2002 in Pakistan and quickly transferred to a black site prison in Thailand. Apparently, he was the first detainee

subjected to "enhanced interrogation techniques," as the practices such as waterboarding were known. That was well before Aug. 1, 2002, the date of the first Justice Department memorandum legalizing these techniques. Did the lawyer who signed the memorandum simply authorize a technique months after this technique had already been applied?

Helgerson: My problem is I cannot go beyond the published report. But you are basically right. There was some legal advice given orally to the CIA that had then been followed up by memorandums months later.

Again, Helgerson's vagueness here is probably deliberate: "legal advice ... was given." He doesn't say whom it came from—perhaps because (as reports have indicated), it came not from OLC, but from Alberto Gonzales.

Which again raises questions about the structure of the IG Report itself—which (at least in the unredacted sections) doesn't describe these oral reports, and—assuming they did come from the White House and not OLC—doesn't reflect the centrality of the White House in the approval process.

The Legal Opinion Behind the IG Investigation

Finally, check out how Helgerson explains why he conducted an investigation.

SPIEGEL: Why did you initiate a review of the CIA's interrogations program at the beginning of 2003?

John Helgerson: At the time, we thought it important to look systematically at such an important program that had been in operation since shortly after 9/11. In addition, we wanted to respond to expressions of concern by some agency employees involved with the program who were uneasy about it. Actually there

were a number of individuals who expressed to me their concern about various aspects of this program. They had the feeling that what the agency was doing was fundamentally inconsistent with past US government policy and American values. It was something new and unprecedented for the agency. A critical legal opinion was missing which I believed was needed to protect agency employees and detainees. It was then my own initiative to undertake this review. And in the process we found things that we did not expect to find.

His reasons are:

- The importance of examining "such an important program" that had been in place for over a year
- The need to respond to concern from agency employees that "what the agency was doing was fundamentally inconsistent with past US government policy and American values"
- The lack of "a critical legal opinion"

I'm interested here in Helgerson's description that the missing legal opinion—almost certainly one analyzing whether the program violated the Convention Against Torture's prohibition on cruel and inhuman treatment—was one of the precipitating reasons for the investigation. Now, that might support Stephen Hayes' contention that Helgerson was a "a critic of the detention program." If he started the investigation with concerns about whether the program violated CAT, then it's perhaps unsurprising that that's what he found. (Though

Helgerson does say that he found things he did not expect.)

But if the absence of a full review of CAT's prohibition on cruel and unusual treatment was one of the reasons behind the investigation, it might explain why, by April 2003 (three months after the start of the investigation), John Yoo and Scott Muller and the Counterterrorism Center were work on such a memo (and also one that widely excused common violations of the law).