

WHAT DID HELGERSON DO WITH THE TORTURE TAPES?

I noted here that both Michael Hayden and John Helgerson are recusing themselves from the torture tape criminal investigation.

Hayden said in a statement today that he was recusing himself from any involvement in the new Justice investigation **because of his past role in reviewing the tape destruction.** "It is important to avoid the conflict of interest, or even the appearance of conflict of interest, that surely would arise if I were also involved in the ongoing investigation," Hayden said.

CIA Inspector General John L. Helgerson announced that he also would recuse himself from the criminal inquiry to avoid a conflict of interest. **Helgerson said he and his staff had "reviewed the tapes at issue some years ago," during the time when agency officials were debating whether to destroy them.**

"During the coming weeks I anticipate describing fully the actions I and my office took on this matter to investigators from the executive and legislative branches," Helgerson said in a statement. "It is important to avoid the conflict of interest, or even the appearance of conflict of interest, that surely would arise if I were also involved in the ongoing investigation."
[my emphasis]

Since Hayden wasn't at CIA when the tapes were destroyed in 2005, I presume when he says he was involved in reviewing the tape destruction, he's referring to his lead-up to sending a silly letter to CIA making transparent excuses for why

the torture tapes were destroyed [Update: actually, I take that back. Hayden was Deputy DNI starting in April 2005, so early enough to be party to the summer 2005 discussions between John Negroponte, then DNI, and Porter Goss, in which Negroponte told Goss not to destroy the tapes]. I'll come back to that in a second. But for now, I'm more interested in Helgerson's reasons for recusing (I'd point out that if he has to recuse going forward, he should have already recused. But this is the Bush Administration, after all).

Helgerson notes he and his staffers "had 'reviewed the tapes at issue some years ago,' during the time when agency officials were debating whether to destroy them." The "time when agency officials were debating whether to destroy them" is generally described as February or March 2003 (when CIA first pitched destroying them to the Gang of Four) through November 2005 (when they were destroyed). We also know there was a CIA briefing for the White House involving Alberto Gonzales, David Addington, and John Bellinger in May 2004, not long after the Abu Ghraib scandal became public (but long after Gonzales, at least, was likely aware of the impending scandal).

In other words, Helgerson and his staff reviewed the torture tapes sometime between early 2003 and late 2005, quite possibly close to the time of that May 2004 White House briefing.

Which is rather significant, since that earlier period (2003 to 2004) coincides with the period when Helgerson's office was also investigating the CIA's interrogation program. Here's a Doug Jehl story on the report **that was published (will coinkydinks never cease?!?!?!?) on November 9, 2005, within days of the torture tape destruction** and apparently one day after the CIA issued a statement denying they torture (though the statement doesn't appear in their collection of public statements from the period).

█ 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.

[snip]

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.

I've seen the report's publication date as either April or May 2004—but in any case, **at almost exactly the same time CIA briefed Addington, Gonzales, and Bellinger** on the torture tapes. Which makes Helgerson's claim that he "reviewed the tapes at issue" during that period particularly interesting. Helgerson's report—which focuses on the treatment of a number of named detainees—may have relied on those torture tapes to form the judgment that the CIA was engaged in cruel and inhuman treatment. In fact, it's even possible that the CIA briefing in May 2004 pertained not just to Abu Ghraib (which was, after all, a DOD operation, not a CIA one), but also to the fact that the CIA IG had just declared in a written report that the tactics used (and presumably shown in the tapes) amounted to illegal treatment of detainees.

So let's review the coinkydinks, for a moment. John Helgerson published an IG report (possibly relying on the tapes) suggesting the CIA's interrogation program may be illegal almost exactly contemporaneously with the date of CIA-White House briefing at which they discussed destroying the torture tapes. Then, one week after the Dana Priest story and several days after Brinkema's inquiry on whether the government had any tapes from interrogations, the CIA issues a public statement denying it tortures. And the following day, voila! The most

extensive discussion of the IG report comes out in the NYT. And, either shortly before or shortly after this newspaper article, the torture tapes are destroyed.

If Helgerson viewed the tapes and used them to conclude that the interrogations were illegal, it would sure explain one of the motivations for destroying the tapes.

But that's not all. Recall that between the time that the first tapes were found (September 13, 2007) and the time when the NYT reported on the destruction of the tapes (December 6, 2007), Michael Hayden's investigation into Helgerson became public (October 11, 2007, also in an article by Mazzetti and Shane).

A small team working for General Hayden is looking into the conduct of the agency's watchdog office, which is led by Inspector General John L. Helgerson. Current and former government officials said the review had caused anxiety and anger in Mr. Helgerson's office and aroused concern on Capitol Hill that it posed a conflict of interest.

The review is particularly focused on complaints that Mr. Helgerson's office has not acted as a fair and impartial judge of agency operations but instead has begun a crusade against those who have participated in controversial detention programs.

[snip]

Some agency officers believe the aggressive investigations by Mr. Helgerson amount to unfair second guessing of intelligence officers who are often risking their lives in the field.

"These are good people who thought they were doing the right thing," said one former agency official. "And now they are getting beat up pretty bad and they

have to go out and hire a lawyer."

That investigation (which was scuttled by Congress) sure looks like it pertained to Helgerson's investigation of CIA interrogation methods. And Hayden's investigation of Helgerson may well have coincided with Hayden's "review of the tape destruction."

In other words, this investigation seems like nothing so much as the end product of a bloody Spook fight that follows up several skirmishes over the years.

Update: This, from Mazzetti and Johnston, appears to support my supposition that Helgerson's investigation used the tapes in its determination that the CIA was engaged in cruel and inhuman treatment.

In an announcement on Wednesday, John Helgerson, the inspector general, said he would recuse himself from the investigation to avoid the appearance of a conflict of interest.

Mr. Helgerson's office had reviewed the videotapes, documenting the interrogation of Abu Zubaydah and Abd al-Rahim al-Nashiri, as part of an investigation into the agency's secret detention and interrogation program.

The tapes are thought to portray the use of the technique known as waterboarding, which simulates drowning and which has widely been condemned as torture.

Mr. Helgerson completed his investigation into the program in early 2004. [my emphasis]