

By Scott Horton

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You can catch my review of the CIA Inspector General John Helgerson's report on [BBC's "The World"](#) or on MSNBC's Live with Carlos Watson today at 11 ET. Here, in the meantime, are seven points that I draw from it:

1.

*The worst is yet to come.* Yesterday the CIA released a fresh copy of the report with roughly half of the "case study" discussion now unmasked. But context and placement suggest that the material that remains concealed contains some of the worst discussion of abuse in the report. The heavy redactions start around page 25, and the redactions cover discussion of the origins of the program and the approval process, as well as the discussion of specific prisoners, notably Abu Zubaydah, Abd al-Rahim al-Nashiri, and Khalid Shaikh Mohammad. Although cases in which the guidelines provided by the Justice Department were exceeded have been discussed, it's likely the case that the still blacked-out passages cover instances where Justice gave a green light but the conduct was so gruesome that CIA wants to keep it under wraps. That means we haven't heard the last of the Helgerson report, and further disclosures are likely.

2.

*Opposition from within.* For years the CIA has said that CIA personnel would be demoralized and the reputation of the agency would be damaged by disclosure of the contents of the report. But the report documents just the opposite. The Inspector General's review was launched by complaints coming from valued senior employees who felt that the Bush Program (as John Yoo has dubbed it) was wrong. One of them actually expresses his worry that those involved will be hauled before the World Court at some point because of [and that's redacted!] This makes clear that good employees of the agency opposed the Bush Program, were vocal in their opposition, and focused concern on the program's illegality. The OLC memos were intended to silence these complaints, but they only accentuated the agency's morale problems by enmeshing it in obviously illegal and immoral conduct. By contrast, the number of CIA personnel involved in pushing it through and supporting it is tiny—probably not many more than two dozen—though their voices are heard very loudly. It's interesting that in a stream of appearances by CIA personnel on TV yesterday—Tyler Drumheller, Jack Rice, Bob Baer and others—all said that a criminal investigation was a good idea. The official spokesman of the CIA torture team remains,

as for the last seven years, David Ignatius.

3.

*George Tenet and Michael Hayden misled the public.* Both directors from the Bush years made numerous statements in which they argued that all the procedures used were closely policed and clearly legal. Previously I discussed

[Hayden's appearance before the Council on Foreign Relations](#), in which he gave broad assurance that the law was carefully studied and enforced. But the IG report, which Tenet and Hayden read, makes clear that these claims are false. Tenet and Hayden were put on notice that internal efforts to police the process had collapsed and that there were serious legal issues surrounding what was done. We know that Tenet and Hayden vehemently opposed release of the Helgerson report. It's now evident why. This report casts them as liars.

4.

*All trails lead to the Vice President's office.* At several points, redactions begin just when the discussion is headed toward the supervision or direction of the program and context suggests that some figure far up the Washington food chain is intervening. Moreover, as Jane Mayer recounts in *Dark Side*, Helgerson's report was shut down when he was summoned, twice, to meet with Dick Cheney, who insisted that the report be stopped. Cheney had good reason to be concerned. This report shows that the vice president intervened directly in the process and ensured that the program was implemented. The OPR report likewise shows Cheney's office commissioning the torture memos and carefully supervising the process. It is increasingly clear that torture was Dick Cheney's special project and that he was personally and deeply involved in it. And the CIA report has some amazing nuggets that show Cheney's hand. In 2003, after Jay Bybee departed OLC, Cheney struggled to have John Yoo installed as his successor, but ultimately John Ashcroft's candidate, Jack Goldsmith, prevailed. Goldsmith quickly backtracked on the torture authorizations that Yoo and Bybee gave. The result? The CIA stopped taking its cue from OLC and instead turned to the White House for guidance. It is remarkably vague on the particulars, and blackouts emerge just as passages seem to be getting interesting. But there's little doubt that Dick Cheney and his staff were pushing the process from behind the scenes.

5.

*Functioning of black sites.* In arguments over redactions, CIA personnel maintained that materials concerning the operation of the black sites should be kept secret, because if disclosed they could lead to criminal investigations and prosecutions in countries where black sites were located. This is especially true in Europe, where European human-rights norms are binding and many of the torture techniques used are clearly criminalized. A criminal probe is now underway in Poland, and the agency is concerned about what might happen with respect to

the newly outed sites in Lithuania and in Romania. The CIA worries that its local collaborators could be prosecuted—as is happening now in Italy—and that its future operations in those countries might be compromised. Nevertheless, the report supplies a good deal of information about how the black sites functioned and the lawless environment that was created inside of them.

6.

*The CIA's waltz with Justice.* The Bush Administration claimed that Justice gave legal advice to the CIA and that the CIA followed and applied it. But the IG report reveals a strikingly different relationship. As the OLC memos were written, there was a sort of waltz between CIA and Justice lawyers in which different hypotheticals were offered up in solicitation of opinions—something on the order of “If we told you we did x, what would you say about it?” This suggests the OLC memos were effectively negotiated. It also appears that CIA requested a number of after-the-fact variations to protect practices that clearly exceeded guidance. Why does this matter? It undermines the ability of CIA employees and contractors to “rely in good faith” on the OLC memos, because it shows that OLC wasn’t really giving legal advice. Instead it was issuing “get out of jail free” cards. A good example comes with waterboarding: “With respect to two detainees at those sites, the use and frequency of one EIT, the waterboard, went beyond the projected use of the technique as originally described to DoJ. The Agency, on 29 July 2003, secured oral DoJ concurrence that certain deviations are not significant for the purposes of DoJ’s legal opinions.”

7.

*The “prior investigation” canard.* It looks like the favorite talking point emerging for torture apologists (like David Ignatius) is that the CIA cases were already examined by career prosecutors who decided not to take any action. But this claim is false. Although these cases were enshrouded in extraordinary secrecy from the outset, I closely studied their management and conducted a number of interviews with Justice personnel who were involved; I also worked with the House Judiciary Committee in its review of the matter. The cases were referred by Helgeson to the Justice Department, which in turn passed them to the U.S. Attorney for the Eastern District of Virginia, Paul J. McNulty. (This U.S. attorney’s office was the most highly politicized in the entire U.S. attorneys system, and McNulty was ultimately promoted to the office of deputy attorney general and then resigned amidst accusations of misconduct involving the politicization of the Justice Department.) McNulty’s office acted as a sort of “dead letter office” for troublesome torture allegations. The suggestion that there was an active investigation is laughable. No grand jury was impaneled or testimony taken, and contrary to Ignatius’s claims no decision was taken not to prosecute. What happened instead was inaction. Why? If the cases had been pressed, the CIA personnel involved would have immediately implicated high-level Bush Administration officials. The Justice Department’s Office of Professional Responsibility has examined the handling of these cases and has confirmed that no serious investigation ever occurred. So the suggestion that Holder is now somehow undermining or second-guessing the decision of career prosecutors is preposterous.

