

PORTER GOSS ESCALATES ATTACKS ON PELOSI AND HARMAN-BUT ADMITS CIA BROKE THE LAW

Porter Goss—who was DCI when the CIA destroyed videotapes depicting illegal torture and had been warned not to destroy the tapes, and who may have been the "senior CIA official" who allegedly lied to Congress about the torture CIA had done in February and June of 2005—just escalated the Republican attack on Nancy Pelosi and Jane Harman. In an op-ed in the WaPo, he describes the briefing Congress' intelligence leaders received in fall 2002:

Let me be clear. It is my recollection that:

The chairs and the ranking minority members of the House and Senate intelligence committees, known as the Gang of Four, were briefed that the CIA was holding and interrogating high-value terrorists.

- *We understood what the CIA was doing.*
- *We gave the CIA our bipartisan support.*
- *We gave the CIA funding to carry out its activities.*
- *On a bipartisan basis, we asked if the CIA needed more support from Congress to carry out its mission against al-Qaeda.*

But look carefully at Goss' language describing what they were briefed on.

In the fall of 2002, while I was chairman of the House intelligence committee, senior members of Congress were briefed on the CIA's "High Value Terrorist Program," including the development of "enhanced interrogation techniques" and what those techniques were.

[snip]

Today, I am slack-jawed to read that members claim to have not understood that the techniques on which they were briefed were to actually be employed; or that specific techniques such as "waterboarding" were never mentioned.

Goss explains that the Gang of Four was briefed on "the development" of the torture program and "what those techniques were." He implies strongly—but does not say it directly—that "waterboarding" was mentioned specifically. And he complains that the attendees should have understood that "the techniques on which they were briefed **were to actually be employed.**"

Note what Pelosi has said:

"In that or any other briefing...we were not, and I repeat, were not told that waterboarding or any of these other enhanced interrogation techniques **were used,**" said Pelosi. "What they did tell us is that they had some legislative counsel...opinions that they could be used, but not that they would."

[snip]

"Further to the point was that if and when they would be used, they would brief Congress at that time," said Pelosi. "I know that there's some different interpretations coming out of that meeting. My colleague, the chairman

of the [intelligence] committee, has said, well if they say that it's legal you have to know they're going to use it. Well, his experience is that he was a member of the CIA and later went on to head the CIA. Maybe his experience is that they'll tell you one thing but may mean something else."

Pelosi is referring to then-GOP Rep. Porter Goss. "My experience was they did not tell us **they were using that**, flat out. And any, any contention to the contrary is simply not true," she said.

Porter Goss says Pelosi should have known "the techniques on which they were briefed were to actually be employed." But he doesn't say she should have known "the techniques on which they were briefed **had already been** employed." Which is a critical part of her complaint—that CIA did not tell Congress that waterboarding and other techniques "were used" ... that "they were using that." This briefing is always described as occurring in "fall 2002." Even interpreting "fall" broadly to include all of September, that means the briefing took place **after they had already waterboarded Abu Zubaydah 83 times in a month.**

So whether or not Pelosi is arguing "waterboarding" was mentioned or not, even Goss appears to confirm one of Pelosi's main points. The CIA did not reveal this was already taking place. Even in Goss' understanding, they revealed only that waterboarding "was to be employed"—in the future.

In addition, Goss scoffs at what he calls Memoranda for the Record filed in secret.

And for those who now reveal filed "memorandums for the record" suggesting concern, real concern should have been expressed immediately – to the committee chairs, the briefers, the House speaker or minority leader, the CIA director or

the president's national security adviser – and not quietly filed away in case the day came when the political winds shifted.

This may refer to a Pelosi memorandum, or it may refer to Jane Harman's letter to CIA Counsel Scott Muller, in which Harman raised clear policy objections to the torture program.

It is also the case, however, that what was described raises profound policy questions and I am concerned about whether these have been as rigorously examined as the legal questions. I would like to know what kind of policy review took place and what questions were examined. In particular, I would like to know whether the most senior levels of the White House have determined that these practices are consistent with the principles and policies of the United States. Have enhanced techniques been authorized and approved by the President?

You discussed the fact that there is videotape of Abu Zubaydah following his capture that will be destroyed after the Inspector General finishes his inquiry. I would urge the Agency to reconsider that plan. Even if the videotape does not constitute an official record that must be preserved under the law, the videotape would be the best proof that the written record is accurate, if such record is called into question in the future. The fact of destruction would reflect badly on the Agency.

But note—Harman's letter was an immediate expression to the CIA Director expressing real concern. Pelosi at least claims to have concurred with that expression of concern. And Muller's response to Harman? Nada

(Actually, now that I look at it that's not true—Muller does respond, but he refuses to tell her about the policy background: "While I do not think it appropriate for me to comment on issues that are a matter of policy, much less the nature and extent of Executive Branch policy deliberations, I think it would be fair to assume that policy as well as legal matters have been addressed within the Executive Branch.")

Now, setting aside Pelosi's and Goss' differing understanding of the fall 2002 briefing for a moment, note what Goss, even with his version, also admits to.

Even according to Goss' version, just the the Chairs and Ranking Members of the two intelligence committees attended the briefing (though he tries to imply, with his "senior members of Congress," that it was more than that). Not the Majority and Minority Leaders of the House and Senate, as required by law. Briefing just the Gang of Four—and not the full Gang of Eight—is a violation of the law. After all, Pelosi couldn't have complained to the House minority leader (Dick Gephardt at the time), because he had not been briefed on the program!!

So while Goss seems intent on escalating his attempts to implicate Pelosi and Harman in his own complicity with the CIA's torture program, in doing so he admits that CIA broke the law, twice, in its briefing of Congress. It did not brief Congress before it started the torture (and recall, we know the torture had been contemplated since at least April, so they can't claim they didn't have time to inform Congress beforehand). And, the CIA failed to meet the legal requirements on informing Congress by including Congressional leadership as well as intelligence leadership.

Update: The SSCI narrative makes it clear that the briefing of the Senate intelligence leaders, at least, happened after they had already waterboarded Abu Zubaydah.

In the fall of 2002, after the use of interrogation techniques on Abu Zubaydah, CIA records indicate that the CIA briefed the Chairman and Vice Chairman of the Committee on the interrogation.

[snip]

Just as the statement does not purport to identify all Executive Branch meetings and documents on the CIA detention and interrogation program, the statement does not purport to describe either all Executive Branch communications or briefings to the Committee about, or the limitations on the Committee's use of and access to information about, the CIA's program.

The second half of that quote—which is a footnote—suggests the Republicans may have gotten more (or there may have been complaints), and that there were at least complaints about how the intell leaders could use the information.