

ABOUT DEMOCRATIC COMPLICITY: THE EARLY BRIEFINGS ON TORTURE

Leen links to two articles suggesting the Democrats are reluctant to have a truth commission because of their own complicity in torture.

Now, I don't mean to be an apologist for Democrats on torture—because I do believe the Constitutional Speech and Debate clause must take precedence over national security guidelines that limit briefings to the Gang of Four or Eight. But before we start attacking Democrats, let's establish what we know about briefings that happened before the waterboarding of detainees. Between the public spat between Porter Goss and Nancy Pelosi, Jane Harman's letter to Scott Muller, and the SSCI Narrative, we can establish that the only Democrat who was briefed in time to prevent waterboarding and told it **had been** and **was going to be** used—Jane Harman—wrote a letter raising concerns about the techniques.

Fall 2002: The CIA first briefed the Gang of Four (then comprising Richard Shelby, Porter Goss, Bob Graham, and Nancy Pelosi) **after** the waterboarding of Abu Zubaydah had already ended—and possibly after the waterboarding of al-Nashiri had, too. Furthermore, even Porter Goss appears to confirm Nancy Pelosi's assertion that the CIA spoke of enhanced techniques (whether or not they mentioned waterboarding specifically) as a prospective activity. That is, in fall 2002, CIA did not reveal that it had already waterboarded Abu Zubaydah (and possibly al-Nashiri).

January/February 2003: Three of four leaders in the intelligence committees changed in 2003. Jello Jay replaced Graham (who was running for President), Pat Roberts replaced Shelby (who had been ousted for leaking classified information),

and Jane Harman replaced Pelosi (who had become Minority Leader). The SSCI Narrative notes that Roberts—but not Jello Jay—got a briefing in "early 2003" (though Jello Jay's staffer did attend).

After the change in leadership of the Committee in January of 2003, CIA records indicate that the new Chairman of the Committee was briefed on the CIA's program in early 2003. Although the new Vice-Chairman did not attend that briefing, it was attended by both the staff director and minority staff director of the Committee.

In addition, Scott Muller refers to briefing Goss and Harman on February 5, 2003.

Thank you for your letter of 10 February following up on the briefing we gave you and Congressman Goss on 5 February concerning the Central Intelligence Agency's limited use of the handful of specially approved interrogation techniques we described.

Muller's reference to Goss and Harman—but not Roberts—suggests it's possible that Roberts received a separate briefing, potentially with different content. We know from the briefing record on the illegal wiretap program that the Administration did do this, and some of those partial briefings appear to be strategically chosen (note, for example, that after the wiretap program was revealed, Jello Jay was briefed with all the Republicans, but the other Democrats received a briefing of their own—with Pat Roberts present to baby-sit). In other words, we can't be sure that the Goss-Harman briefing was the same as the Roberts briefing, which Jello Jay did not attend.

So by February 2003, only one Democrat had been informed directly that enhanced techniques **had already been used**—Jane Harman. And she wrote a

letter even before KSM was captured, questioning the policy wisdom of the techniques and warning CIA to keep the records of the interrogations.

After March 2003: Finally, the SSCI Narrative reveals that Jello Jay and Pat Roberts (and potentially their House counterparts) were briefed after KSM's waterboarding was complete.

According to CIA records, the Chairman and Vice Chairman of the Committee were also briefed on aspects of the program later in 2003, after the use of interrogation techniques on Khalid Sheikh Muhammad.

To be clear, this schedule doesn't absolve Pelosi and (especially) Jello Jay from not having objected. And it's worth noting that Jello Jay was the one who pushed to have this narrative constructed; since he is the only Democrat who was briefed before 2006 that torture had occurred but apparently didn't object, the narrative may be CYA for him. And Jello Jay's more significant complicity may explain why the Senate (Jello Jay is still on SSCI) has more strongly objected to an inquiry than the House, where Pelosi is pushing for one.

Now, Jello Jay was an early backer of Obama, so it's possible Obama's opposed to a truth commission to protect a close ally. But we should be careful not to suggest that all Democrats would need such protection.