

WHY IS PAT ROBERTS SO QUIET?

Virtually every report treating the CIA list of torture briefings seems either blissfully ignorant of or totally unconcerned with two significant conflicts between that list and the SSCI Narrative released earlier last month. The conflicts are:

- CIA says Jello Jay attended the February 4, 2003 briefing on torture; SSCI says he did not (though note CIA's asterisked comment admitting "later individual briefing to Rockefeller" and Rockefeller's recent statement about being briefed, which suggests they may be reaching consensus that he had a later, "incomplete" briefing).
- CIA does not say it briefed the Senate on "legal/policy issues" nor that "CIA [was] currently seeking reaffirmation from DOJ on use of EITs as well as renewed policy approval from NSC principals to continue using EITs" on July 15, 2004—it says it did brief the House intell leaders on this; SSCI says CIA did say it "was seeking OLC's legal analysis on whether the program was consistent with

the substantive provisions of Article 16 of the Convention Against Torture."

The conflicts are important because, if the SSCI narrative is correct, it would show key conclusions reporters are making about the briefings are false, it would clearly undermine the validity of the rest of the CIA briefing list, and it would show that CIA's version left out key aspects of Congressional oversight (or lack thereof). If the CIA version is correct, it would mean CIA avoided at least one discussion about legal issues that pertained directly to the Senate's role in approving treaties.

The conflict, however, is not just a he-said-he-said conflict between Bush's CIA leadership and one key Democrat. The CIA and the SSCI agree that Pat Roberts attended both of these briefings (though not the individual briefing Jello Jay had). Now, Pat Roberts was not on SSCI when it developed its narrative, so he may or may not have had input into the narrative. But it has been public for weeks, and Pat Roberts remains mum about its accuracy (or not; also, he has not yet weighed in on the CIA version, either).

But we do know there has been an extended process between CIA and SSCI on these issues.

As Jello Jay explains, discussions about the SSCI narrative started last August—and the CIA, as well as key members of the Bush Administration—got input.

In August 2008, I asked Attorney General Michael B. Mukasey to join the effort to create such an unclassified narrative. The Attorney General committed himself to the endeavor, saying that if we failed it would not be for want of effort. Over the next months, Committee counsel and representatives of the Department of Justice, CIA, Office of the Director of National Intelligence,

and the office of the Counsel to the President discussed potential text. The shared objective was to produce a text that, putting aside debate about the merits of the OLC opinions, describes key elements of the opinions and sets forth facts that provide a useful context for those opinions, within the boundaries of what the Department of Justice (DOJ) and the Intelligence Community would recommend in 2008 for declassification.

The understanding of the participants was that while the final product would be a Legislative Branch document, the collaborative nature of this process would provide the Executive Branch participants with the opportunity to ensure its accuracy. Before the end of the year, this process produced a narrative whose declassification DOJ, the DNI and the CIA supported.

So, at least according to Jello Jay, "Executive Branch participants," presumably including the CIA, had "the opportunity to ensure its accuracy." And CIA supported the declassification of the narrative.

Particularly given that the SSCI narrative references the CIA's own records, it is highly likely that CIA and SSCI identified discrepancies sometime in the last eight months. Yet the CIA at least had its say on the content of the SSCI narrative and assented to its publication.

Which brings us to the Leon Panetta cover letter on the CIA briefing list which included the caveat that,

This information, however, is drawn from the past files of the CIA and represents MFRs completed at the time and notes that summarized the best recollections of those individuals. In the end, you

and the Committee will have to determine whether this information is an accurate summary of what actually happened.

The letter shows that, before Panetta included that significant caveat, there was some back and forth leading up to this list.

April 20: Crazy Pete Hoekstra first writes Dennis Blair about briefings

April 22: WSJ publishes Crazy Pete op-ed saying Democrats were briefed and stating "I have asked Mr. Blair to provide me with a list of the dates, locations and names of all members of Congress who attended briefings on enhanced interrogation techniques;" CIA provides HPSCI an "interim list" of briefings; SSCI releases narrative

April 24: Crazy Pete writes a second letter to Blair

May 5: CIA completes "extensive review" of hard copies and electronic files about briefings, sends letter to Crazy Pete (and sends copy to SSCI in lieu of direct response to John Ensign request for list)

May 6: Crazy Pete Hoekstra receives Panetta letter

May 8: Crazy Pete promises more documents (note, even these newly promised documents may not say that Pelosi was briefed that CIA admitted it already **had** used waterboarding, which is the key point Pelosi has made, only that Pelosi was briefed on techniques that had been used, but not necessarily that she had been told it had been used)

A few things about this: Crazy Pete appears to have released his op-ed stating that,

It was not necessary to release details

of the enhanced interrogation techniques, because members of Congress from both parties have been fully aware of them since the program began in 2002. We believed it was something that had to be done in the aftermath of the 9/11 terrorist attacks to keep our nation safe. After many long and contentious debates, Congress repeatedly approved and funded this program on a bipartisan basis in both Republican and Democratic Congresses.

...before he received the "interim list" of briefings (suggesting he made the claim based on either limited personal information, or information received from people like Porter Goss). And then, after receiving the "interim list" and presumably seeing the SSCI narrative, he sent a second letter to Blair. In response, Panetta provided a list, with some key data missing (such as the CIA briefers for much of 2005), as well as the caveat that Congress would have to determine whether the information is accurate.

So, as far as I can tell, CIA has twice sort of bought off on a chronology that stated their version was not correct (the first time when they acceded to the declassification of the SSCI narrative, the second time when Panetta included the caveat about torture). But Crazy Pete wants to make sure the CIA's own notes from that 2002 briefing become public.

And meanwhile, Pat Roberts, who might be able to offer a third view on these issues, remains silent.