

DID THE WHITE HOUSE REVIEW CIA'S RECORDS ON CONGRESSIONAL BRIEFINGS?

A month ago, I wrote a post noting that CIA had never finished its Memos for the Record of several key Congressional briefings. But as I've been reviewing old Vaughn Indices to get a better sense of what we received yesterday, I've seen some details that raise new questions about CIA's use of Congressional briefings.

That post from last month was based on this FOIA dump, including a collection of materials on whether or not Congress was briefed on the tapes. Those materials include:

- A 2-page MFR of Pat Roberts' February, 4 2003 briefing on torture and the tapes printed out on November 19, 2008. It noted that Roberts named "10 reasons right off" for Congress not to exercise any oversight over torture. It also recorded these details about what CIA told Roberts about the torture tapes:

[Deputy Director of Operations Jim] Pavitt and [CIA General Counsel Scott] Muller described the circumstances surrounding the existence of tapes of the Zubayda debriefing, the inspection of those tapes by OGC lawyers, the comparison of the tapes with the cables describing the same interrogations. According to Muller, the match was perfect and the lawyer who did the

review was satisfied that the interrogations were carried out in full accordance with the guidance. Muller indicated that it was our intention to destroy these tapes, which were created in any case as but an aide to the interrogations, as soon as the Inspector General had completed his report. (In a subsequent briefing to Congressmen Goss and Harman, Muller said that the interrogators themselves were greatly concerned that the tapes might leak one day and put themselves and their families at risk.) Senator Roberts listened carefully and gave his assent. [my emphasis]

- A two-page MFR by Office of Congressional Affairs head Stanley Moskowitz prepared on July 11, 2004, presumably in advance of the 2004 Congressional briefings on (among other things) the IG Report. It lists 4 relevant briefings (the February 4, 2003 briefing for Roberts; the February 5, 2003 briefing for Goss and Harman; the September 4, 2003 briefing for Goss and Harman; the September 4, 2003 briefing for Roberts and Rockefeller). Moskowitz attached the February 4, 2003 Roberts briefing to that memo, noting that “the remainder of the sessions are being finalized.”
- A one-page MFR for the

February 5, 2003 Goss and Harman briefing printed out on April 27, 2009 (so not long before CIA released its torture briefing list on May 7, 2009). The MFR states, "Pls see attached notes." It also records that the "MFR never completed. Closed in FELIX 10/3/07 by OCA IMO."

- An earlier version of that same one-page MFR of the February 5, 2003 Goss and Harman briefing. The print date on it is not shown, though it shows no record of being closed out and/or never completed. There is a post-it on the document labeling it for the "AZ FILE."
- A stub noting that "Pages 3-5 withheld in full," which suggests the two previous pages—the two copies of the Goss and Harman MFRs—were considered part of a package with these withheld pages. This suggests these withheld pages may be the actual notes from the briefing.
- A one-page list (in proportional font, so probably from a different office than OCA) listing "SENSITIVE BRIEFINGS TO OVERSIGHT MEMBERS FROM

FEBRUARY 2003-JULY 2004." It lists the February 5, 2003 briefing first, following by the February 4, 2003 Roberts briefing. It **makes no mention** of the September 4, 2003 briefings of the Gang of Four. It lists a January 28, 2004 briefing of Goss and Harman (the document redacts the description of whether or not EITs were discussed, though since this briefing doesn't appear on CIA's most recent torture briefing list, presumably EITs weren't discussed). And it lists the July 15, 2004 briefing of Roberts and Rockefeller, but not the July 13, 2004 briefing of Goss and Harman covering the same topics.

- A second copy of the July 11, 2004 MFR described above. It seems to be an exact copy, down to the staple holes. The only difference in the presentation I can see is a difference in redaction of one of the staffer's names, which may be significant since one of the staffers present, Michael Sheehy, is reported to have briefed Pelosi on the briefing

(though the Moskowitz MFR only notes the presence of two staffers, not the three recorded in the CIA's most recent list).

- A one-page table listing "Congressional Assent" to the destruction of the torture tapes. It includes: a December 19, 2002 General Counsel email apparently recording "no objection" from the Inspector General to destroying the tapes; Jane Harman's February 10, 2003 letter objecting to such a plan; the MFR of the February 4, 2003 Roberts briefing assenting to the torture tape destruction; note of the mention in the Roberts MFR that the torture tapes were briefed to Goss and Harman in their briefing; affirmation that the tapes were mentioned in the handwritten notes of the Goss and Harman briefing, with a note showing that Hoekstra may never have been briefed on the issue. The mention of Hoekstra shows this document had to have been made after 2005. It appears to have been printed on August 12, 2008, and includes a Bates stamp

(suggesting it has been used in some kind of investigation or discovery).

Now, all of that's a muddle. But that's precisely the point. CIA appears to have had no consistent record-keeping with regards to Congressional briefings. The problems seem particularly acute when it pertains to that February 2003 briefing of Goss and Harman.

Which is why I'm so curious about the way the MFRs from February 2003 are described in this Vaughn Index as documents 155 to 157 (document 164 may be the chart described in the final bullet point above).

Document 155, SSCI Member Briefing, 2 pages: This document is a two-page **draft** MFR recounting a briefing of SSCI members and staff regarding the CIA's RDI program. ... **The document also contains predecisional information transmitted to presidential advisors and used as part of the President's and the CIA's decision-making process.**

Document 156, SSCI Member Briefing, 4 pages: This document **contains two MFRs** discussing a CIA briefing regarding the RDI program. The document contains information **transmitted to presidential advisors in furtherance of the President's decision making process.** ... The document also contains Congressional equities that require coordination with Congress before a final release determination can be determined.

Document 157, HPSCI Member Briefing, 8 pages: This document is an eight-page MFR including three page of handwritten notes discussing a briefing regarding the CIA's RDI program. ... This document also contains Congressional equities that require coordination with Congress before a final release determination can

be reached.

Document 158, HPSCI Member Briefing, 4 pages: This document is a **draft** Memorandum for the Record, with three pages of handwritten notes, discussing a briefing regarding the CIA's RDI program. ... **The document also contains predecisional information used as part of the CIA's decision-making process.** [my emphasis]

See, the muddle gets even worse. Most noticeably, CIA says the MFR describing the Roberts briefing—but not the Goss and Harman briefing—was transmitted to Presidential advisors. In fact, they appear to have sent two MFRs in document 156, though both appear to relate only to the Roberts briefing.

By comparison, they say the Goss and Harman briefing was only used as part of CIA's decision-making, not the White House's.

Which is all the more weird, considering we know CIA met with the White House later in February to strategize how to respond to Jane Harman's letter warning them not to destroy the torture tapes. (The response ultimately ignored her entire objection to destroying the torture tapes.)

And, ultimately, they appear to have completed just one MFR showing Congress getting briefed on the use of waterboarding and the planned destruction of the torture tape. That MFR happens to integrate a line showing that Goss and Harman were briefed—but it tells us nothing about how they (or more pointedly, Harman) responded. It shows Roberts assenting (though he disputes that version). Just as importantly, the MFR (and possibly the briefing itself) falsely claims that OGC (probably John McPherson) found the torture depicted on the tapes had been "carried out in full accordance with the guidance" on torture; when CIA's IG asked him about that subject in June 2003, he said he

"would have to check guidance before answering."

And that MFR—and not the Goss and Harman one, which was never finalized—was what got used on presidential decision-making.

Of course, we might ask Porter Goss what he remembers from that briefing. But last we heard, he was laughing about taking the blame for destroying the tapes.