

# BRIEFING CONGRESS AND DESTROYING TORTURE TAPES

As I mentioned in this post, I've been weeding through the documents released under FOIA to Judicial Watch last week. I think they suggest there's a much closer relationship between the CIA misrepresentations on Congressional Briefings and the destruction of the torture tapes than we've known before.

## **Nancy Pelosi Was Proved Fucking Right**

As you might recall, Judicial Watch pursued this FOIA because they thought they were going to catch Nancy Pelosi in a lie.

After the torture memos were released, the torture apologists tried to claim that Congress had been briefed on—and had approved—of torture. But Pelosi pointed out that when CIA briefed her in September 2002, they did not tell her and Goss that CIA had already gotten into the torture business. In spite of the fact that that was completely consistent with Porter Goss' tales of Congressional briefing, the press took Pelosi's story as an accusation that the CIA had lied. So the right wing transparency group Judicial Watch FOIAed the records of Congressional briefings, with a focus on proving that Pelosi had lied about having been briefed about the torture that had already happened.

Perhaps in response to this hullabaloo, the CIA's Inspector General started a review of Congressional—particularly Pelosi—briefings on June 2, 2009. After about six weeks of reviewing their documentation, they came to the following conclusion (starting on PDF 27):

- Pelosi was briefed on April 2002, before CIA started torturing Abu Zubaydah, and in September 2002, in the

briefing under discussion.

- CIA's own records regarding the September 4, 2002 briefing are so erroneous they show Jane Harman, not Pelosi, received the briefing.
- The only CIA record on the content of the September 4, 2002 briefing is the set of cables between Jose Rodriguez, (probably) Jonathan Fredman, and one other CTC person; this is the cable altered after the fact.
- People from the Directorate of Operations, and James Pavitt personally, repeatedly made claims about the content of the Pelosi briefing over the years, yet none of that sourced any first-hand knowledge or documentation.

That is, as is the case with CIA's other briefings on torture, they have no fucking clue what they briefed to Pelosi.

Which leaves Pelosi and Goss' consistent claim that CIA didn't even tell them they had already waterboarded Abu Zubaydah 83 times by the time they briefed them.

#### **Creating the Illusion of Congressional Oversight**

But the bigger news, as I pointed out earlier, is that the CIA appears to have been crafting a record of Congressional Briefing in conjunction with their efforts to destroy the torture tapes.

As my earlier post laid out, Jose Rodriguez briefed Pelosi and Goss on September 4, 2002. That was the the day before—according to an October 25, 2002 cable (see PDF 3)—folks at CIA HQ started talking in earnest about the danger of the torture tapes. The following day, the briefers altered their record of the meeting (see PDF 84 and PDF 11-12), though we don't know what the change entailed. No official Memorandum for the Record was ever made of the briefing and there is no record of Stan Moskowitz weighing in on the accuracy of CTC's version of the meeting (though he did receive a BCC of it). In other words, CTC made a record of the briefing at the same time as they were laying a plan to destroy the torture tapes, and CIA deviated from standard policy by not making any other record of the briefing (though not completing MFRs of torture briefings appears to have become a habit).

As a side note, I'm not certain, but I believe Jonathan Fredman is one of the other two people involved—along with Jose Rodriguez—in this. On PDF 7 of this set, the IG investigation into Pelosi's briefings describe the last set of documents in its possession as one that someone turned over to DNI leadership on March 23, 2009. On that date, Jonathan Fredman worked at DNI, making him a likely person to have been asked for his documentation on briefing Congress. The description notes that "he, Director (D)/CTC [Jose Rodriguez]" and someone else did the briefing. PDF 11 of the same set quotes from that email: "On 4 September, D/CTC, C/CTC/LGL, and [redacted] provided notification..." which I believe means Fredman—C/CTC/LGL—was the second of three people in the briefing. PDF 84 of this set shows the actual email. This notes that the third person at the briefing was a CTC/Reports person. If I'm right and Fredman had to turn over his documentation, the notice of the "BCC" to Stan Moskowitz would mean that he wrote the email (because otherwise the BCC wouldn't show up). A later description says someone—whom I believe to be Fredman, given the CTC/LGL return address—showed it to Rodriguez who determined it

to be "short and sweet." In other words, Fredman, one guy on the hook for translating (or mistranslating) DOJ's limits to the torturers in the field, may have been the guy helping Rodriguez to tweak that record of the briefing.

But the alteration of the email on the Pelosi-Goss briefing is not the only temporal tie between the destruction of the tapes and the claims about Congressional briefings. As the exchange of emails from PDF 77-81 makes clear, it took almost a month for the CIA to get around to finalizing a cable describing what happened when they briefed Bob Graham and Richard Shelby on September 27. In an email exchange dated October 24, there was some discussion about what should be included, with one email asking "Why not include the names—we did in the HPSCI cable." It appears that this person wanted Graham, Shelby, and their staffers named by name in the CIA's records (the draft of the cable at that point referred to them only by title, whereas later versions of the cable—see PDF 88—include Graham and Shelby's names, and presumably those of their staffers). This exchange—the effort to tailor the record of Congressional notification—took place the day before CIA HQ tried to authorize the taping over of videotapes each day (see PDF 3).

The pattern of discussion about Congressional briefing continued as CTC kept up its efforts to destroy the torture tapes. Just two days before a meeting with George Tenet about destroying the torture tapes held on January 10, 2003, someone from CTC/LGL (perhaps Jonathan Fredman) forwarded the altered version of the cable recording CTC's version of the Pelosi briefing; the invite to the meeting with Tenet (see PDF 36) directs CTC to put together a report detailing, among other things, CTC's "plan to ensure that both the Hill and NSC will support the decision." (See PDF 104-105) And that email was forwarded again by CTC/LGL on June 27, 2003, between the time CIA's Inspector General had interviewed John McPherson about the contents of the torture tapes on June 18 and when, on July

18, 2003, operatives in the Field asked for instructions to destroy media again (recall that CIA had told Jane Harman they would destroy the torture tapes after the Inspector General concluded its review).

In other words, CTC kept pointing back to that cable—the one they had altered—purportedly recording the September 4, 2002 briefing as they made repeated attempts to destroy the torture tapes.

### **Crazy Pete's Timely Briefing**

Which brings us back to Crazy Pete Hoekstra's role in all of this. As you might recall, Crazy Pete is the guy who set off the witch hunt against Pelosi last year when—in response to widespread horror about the torture memos—he wrote a WSJ op-ed insisting that Congress was briefed on and had approved the torture.

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.

[snip]

Members of Congress calling for an investigation of the enhanced interrogation program should remember that such an investigation can't be a selective review of information, or solely focus on the lawyers who wrote the memos, or the low-level employees who carried out this program. 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.

Any investigation must include this information as part of a review of those in Congress and the Bush administration who reviewed and supported this program.

Presumably, when he made this and subsequent claims about who had been briefed, he at least had some basis for the assertion that Democrats and Republicans in Congress had been briefed and had approved of the torture going back to 2002. He wasn't at those early briefings. So where did his (mistaken) certainty come from?

That leads me to a somewhat related question. What went on at Crazy Pete's briefing—a briefing for Crazy Pete alone, without his counterpart Jane Harman, who had long expressed opposition to destroying the torture tapes, or his own staff—on the very day CIA destroyed the torture tapes?

That's right. As I have noted in the past, Crazy Pete Hoekstra (and Duncan Hunter, in a separate briefing) got a "complete brief" on the torture program on November 8, 2005, the day the torture tapes were destroyed.

An MFR lacking real detail (see PDF 32) at least reveals that Office of Congressional Affairs head Joe Wippl and C/CTC/LGL (who I believe would still be Jonathan Fredman) gave the briefing. A number of chronologies on Member Briefings included in this FOIA set note that no staffers attended these two briefings (see, for example, page 100 of this PDF), and those **appear** to be the only briefings for which CIA noted that no staffers attended. And note, minimal as the MFR on this is, it is one of just five or six briefings in the years before the torture tapes were destroyed for which CIA actually **did** do an MFR (one of the others is the briefing at which Pat Roberts okayed the destruction of the torture tapes).

In other words, this was one of the few torture

briefings CIA's Office of Congressional Affairs saw fit to memorialize. They don't say what was briefed, really, but they've got proof that two men from the CIA briefed Crazy Pete and just Crazy Pete on something related to the torture program the day CIA destroyed the torture tapes.

It's not definitive they were talking about the torture tapes, mind you; after all, the torture apologists were in full court press trying to prevent McCain's Detainee Treatment Act from taking away all the torture toys.

But one more thing suggests there may be a connection. On the evening of the same day Crazy Pete got this briefing, the same day CIA destroyed the torture tapes, someone sent an email with a list of *all* Congressional briefings related to the torture program (see page 90-92 of the second PDF). It says only, "Per your request please find attached List of Members who have been briefed and a couple of other categories." The list is interesting for two reasons. First, because the email forwarded a list with some key errors, in that it listed Harman, not Pelosi, as having been briefed at the first torture briefing in September 2002 (with a handwritten note, "error, it is Pelosi per 145166"). It also includes an error that remained in the CIA's own records until last year, showing Goss, not Crazy Pete, as the Chair in a meeting in March 2005 (it's unclear the meeting with Harman happened; what appears to have happened instead is an extra briefing with Dick Cheney for Pat Roberts and Jay Rockefeller).

More interestingly, the Crazy Pete and Hunter briefings—which had taken place that very day—**were already in the Excel spreadsheet showing all the briefings**. It's as if they briefed Crazy Pete and Hunter just so they could print this out as part of a CYA attempt to say that Congress had approved the torture tape destruction. And maybe Crazy Pete and Hunter did just that.

### **The Briefings and John Durham's Investigation**

All of which leads me to wonder whether the false claims about CIA's briefing of Congress plays into the investigation of the torture tape destruction.

One thing that suggests there might be a connection between these Congressional briefing issues and the torture tape destruction is the release of documents—for the first time—points to Jose Rodriguez directly. In the same way the last major document dump appears to have been tied to John McPherson's testimony before the grand jury (and therefore seemed to be triggered by events in Durham's investigation), this one seems to be triggered, at least partly, from a willingness on the part of CIA or DOJ to release documents on Jose Rodriguez.

And they name Rodriguez directly, not just by title. I find that particularly odd, because his role in briefing Pelosi has been religiously guarded over the last year, even from reporters with great ties to CIA.

Then there's this other detail. The email and briefing list from November 8, 2005—recording Crazy Pete and Duncan Hunter's briefings—has a Bates stamp in a form that several of the last big torture FOIA documents did, reading 5/12/08 TCG 145226-145228. The Bates number is stamped roughly 12,000 numbers—and 11 days—after the "Timeline Regarding Destruction of Abu Zubaydah Videotapes" (see PDF 38-39). Mind you, I've just guessed that those TCG numbers are a Durham-related Bates, but the date shows an interest from someone in 2008. And it must be an interest in one original copy, since all show the correction regarding Pelosi's briefing (though, curiously, at least three copies of this very document appear in the FOIA set, suggesting it was circulated after the stamp was attached).

None of that is definitive, of course. But the picture of alterations and errors in Congressional briefing, along with the way in which some of those events coincided with others known events in the torture tape destruction, suggests there may be a connection.