

# PILING ON POLITIFACT

Jamison Foser already beat up PolitiFact for its ridiculous judgment on the he-said-she-said debate over whether Nancy Pelosi was briefed on torture.

The real problem here is PolitiFact's insistence on declaring Pelosi's statement "true" or "false," when the painfully obvious reality is that PolitiFact just doesn't know whether it is true or false. Other media would be wise to take PolitiFact's conclusion with a grain of salt.

But I'm going to join in the fun to point out PolitiFact's real difficulty with verb tenses and pronouns. The point of their post, remember, is to judge whether or not this Pelosi statement is correct.

We were not, I repeat, were not told that waterboarding or any of these other enhanced interrogation methods were used. What they did tell us is that they had some legislative counsel – the Office of Legislative Counsel opinions that they could be used, but not that they would.

Pelosi's statement refers to a briefing occurring on September 4, 2002, after Abu Zubaydah was waterboarded 83 times. According to her statement, in September 2002, the CIA told Congress it could torture detainees, but did not say they would (in the future) be doing so. Her further comments from the same answer make that even more clear.

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.

[snip]

And so, you know – flat out – they never briefed us that this was happening. In fact, they said they would if and when they did?

That is, Pelosi's entire point was that in September 2002, after the CIA had already torturing Abu Zubaydah for months, the CIA came before Congress and spoke prospectively about using torture, but did not reveal that they had already been and were currently using it.

So PolitiFact goes to the CIA briefing list, acknowledging Panetta's comments about its potential inaccuracy, yet nevertheless deciding that it, PolitiFact, should determine whether it is inaccurate or not (it decides not), and looks at this language.

Briefing on EITs (enhanced interrogation techniques) including use of EITs on (alleged al-Qaeda operative) Abu Zubaydah, background on authorities, and a description of the particular EITs that had been employed.

Now, even assuming one should treat this document as accurate when the Director of CIA is saying it may not be, look carefully at this language. "Use of [torture] on ... Abu Zubaydah" does not indicate whether CIA briefed these prospectively or not—the phrase could describe the potential use of torture in the future. "Background on authorities," everyone agrees got briefed. Then, "description of the particular [torture techniques] that had been employed." Not, "a description **that** torture had been employed," but rather a description of **what** had been employed. Nothing in this passage makes it clear that CIA informed Congress what torture had already been used—the language is ambiguous enough to support a completely prospective briefing. Sure, that would amount to a weasely use of language, but perhaps not out of bounds for a document that the CIA itself says might be inaccurate.

Then PolitiFact goes to Porter Goss' language. PolitiFact wrestles with the fact that, at some points, Goss talks generally about all the briefings he attended (which, after all, continued through the July 2004 briefings that reflected the very explicit CIA IG report), but decides it's fair to assume that Pelosi, in her first person plural discussion of what she was told, meant to invoke all the briefings that Democrats attended (the bulk of which, of course, she was not present for), rather than interpreting "we" to refer to herself, Goss, and the two staffers who attended that September 2002 briefing—a truly bizarre and capricious interpretation of Pelosi's plain language, particularly given her reference to her personal experience.

The timeline – and Goss's corroboration – contradicts her, although we should add one caveat about specific discussions of waterboarding.

Although Goss says waterboarding was part of the discussion, there's nothing in the CIA timeline that states it was specifically discussed in the briefing Pelosi attended. So if we stick strictly to public documents released so far, there's no conclusive evidence that Pelosi was briefed on waterboarding. However, waterboarding was specifically mentioned elsewhere in the timeline for briefings for other members of the intelligence committee who presumably would be covered by her reference to "we."

But ultimately, PolitiFact looks at the same language I looked at in which Porter Goss makes it clear he is referring specifically to the September 2002 briefing.

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.

PolitiFact, having been untroubled already by the complexities of verb tense in this piece, pays no more attention to Goss' verb tense here. "The techniques .... were to be employed." Like Nancy Pelosi, Goss does not use the past tense to refer to these torture techniques. His language, **just like Nancy Pelosi's**, speaks only of potential future use of torture, not past use of torture.

Now, I don't know whether the folks at PolitiFact are just too stupid to understand the difference. Yes, they are right, Porter Goss and Nancy Pelosi dispute whether it should have been clear from that briefing that the CIA was, in the future, going to engage in torture. But no one—not Porter Goss, not the CIA—is definitively asserting that CIA told Pelosi and Goss that torture had already been used (though CIA definitely claims to have briefed them on the techniques that had been used).

Perhaps PolitiFact got so caught up in the glee of a he-said-she-said debate that it ignored the legally pertinent issue—whether CIA briefed Congress on its actions before those actions, or even kept Congress up to date on its actions. But that is, after all, the legally pertinent issue. And on that point, Goss' public statements to date do not contradict Pelosi's assertions that the CIA did not tell Congress about the torture they had been doing.