

THE TWO TORTURE TAPE SUSPECTS, THE PELOSI BRIEFING, AND THE PANETTA STATEMENT

A number of people are panicking about Leon Panetta's statement to CIA employees, believing it rebuts Nancy Pelosi's statement.

There is a long tradition in Washington of making political hay out of our business. It predates my service with this great institution, and it will be around long after I'm gone. But the political debates about interrogation reached a new decibel level yesterday when the CIA was accused of misleading Congress.

Let me be clear: It is not our policy or practice to mislead Congress. That is against our laws and our values. As the Agency indicated previously in response to Congressional inquiries, our contemporaneous records from September 2002 indicate that CIA officers briefed truthfully on the interrogation of Abu Zubaydah, describing "the enhanced techniques that had been employed." Ultimately, it is up to Congress to evaluate all the evidence and reach its own conclusions about what happened.

My advice – indeed, my direction – to you is straightforward: ignore the noise and stay focused on your mission. We have too much work to do to be distracted from our job of protecting this country.

We are an Agency of high integrity, professionalism, and dedication. Our task is to tell it like it is—even if that's not what people always want to hear. Keep it up. Our national security

depends on it.

But there's a better way to understand this.

First, look at Panetta's statement about the briefings themselves.

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Panetta is stating two things:

1. The contemporaneous records (that is, the CIA briefer's own notes on the briefing) show that the briefers "briefed truthfully ... describing 'the enhanced techniques that had been employed'" on Zubaydah.
2. It is up to Congress to evaluate this evidence and "reach its own conclusions about what happened."

Now, first of all, Panetta is not saying (nor has anyone said, not even Porter Goss) that the briefers briefed Congress that these techniques had been used. I know this sounds weasely, but until someone says, in plain language, that the CIA told Congress those techniques had already been used on Abu Zubaydah, we should assume that's not what the notes reflect, because if they did, you can be sure both the briefing list and the public statements would say so. But no one is saying that. And against that background,

Panetta is reiterating the statement that Congress should determine what happened—a reiteration of the admission that CIA's own briefing records are not the totality of the story.

The CIA briefing list records that the following people participated in the briefing: Nancy Pelosi, her staffer Michael Sheehy, Porter Goss, his staffer Tim Sample, briefers from the CounterTerrorism Center (CTC), and the Office of Congressional Affairs (OCA; elsewhere, we've been told four people, total, from CIA attended).

While CIA doesn't say it, the chances are very good that the head of CTC was among the four CIA officials who attended that briefing—he probably led the briefing. On September 4, 2002, the head of CTC was Jose Rodriguez.

Jose Rodriguez, you'll recall, is one of the key suspects in the torture tape destruction.

Rodriguez admits to overseeing the destruction of the torture tapes, though he excuses doing so with this story (delivered by his lawyer, leaker extraordinaire Bob Bennett):

Rodriguez, whom the CIA honored with a medal in August for "Extraordinary Fidelity and Essential Service," declined requests for an interview. But his attorney said he acted in the belief that he was carrying out the agency's stated intention for nearly three years. "Since 2002, the CIA wanted to destroy the tapes to protect the identity and lives of its officers and for other counterintelligence reasons," Bennett said in a written response to questions from The Washington Post.

"In 2003 the leadership of intelligence committees were told about the CIA's intent to destroy the tapes. In 2005, CIA lawyers again advised the National Clandestine Service that they had the authority to destroy the tapes and it

was legal to do so. It is unfortunate," Bennett continued, "that under the pressure of a Congressional and criminal investigation, history is now being revised, and some people are running for cover."

That is, Rodriguez doesn't deny having the torture tapes destroyed—tapes showing Abu Zubaydah's torture, which Rodriguez probably briefed Nancy Pelosi incompletely on on September 4, 2002. Rather, he says that 1) they had intended to destroy the tapes going back to 2002, 2) Congress had been briefed on the plan to destroy them in 2003, and 3) Rodriguez got the legal okay to destroy them in 2005.

With that in mind, consider that the other key suspect in the torture tape destruction is Porter Goss, in the role he played in 2005 as Director of Central Intelligence. We know that Goss was explicitly warned, in writing, not to destroy the torture tapes. We know that Goss didn't tell Rodriguez not to destroy the tapes. And there are reasons to believe that the rest of Goss' story about the torture tape is less than forthcoming.

So Jose Rodriguez, may have, at a time when (he now says) he was already thinking about destroying the torture tapes of Abu Zubaydah's torture, briefed Nancy Pelosi and Porter Goss on the techniques used to torture Zubaydah. He, or someone else at the briefing, went back afterwards and wrote down what he remembered from the briefing, which is that he described the techniques used on Zubaydah (though not necessarily that he had told Pelosi and Goss those techniques had been used). Porter Goss has said Nancy Pelosi is nuts not to have assumed—at that time—that they were going to use waterboarding going forward. But even he, thus far, has not claimed that CIA told them torture had already been used.

We've got Nancy Pelosi in a briefing with (probably) the two prime suspects from the

torture tape destruction. She has said CIA misled them, then, about whether or not CIA had already used torture. And neither Goss nor the CIA generally (representing CTC and therefore probably Rodriguez) is really disputing that they didn't tell her that torture had already been used.

Now do you understand why people are coming after Pelosi so aggressively, even though there appears to be no disagreement about whether CIA told Congress torture had already been used?

Okay, with that in mind, return to the bulk of Panetta's comment, where he tells everyone not to get distracted, where he says that CIA does not have a policy of lying to Congress.

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My advice – indeed, my direction – to you is straightforward: ignore the noise and stay focused on your mission.

This is a statement reflecting not just the worries at CIA that they've been sold out again,

asked to break the law, but then hung out to dry after the fact. This is a statement given at a time when the very people being investigated (probably)–Rodriguez and Goss–are two of the three key players in the briefing at the time. And this is a statement that narrowly affirms the accuracy of the briefing (given the briefing notes), while admitting that Congress should determine the full story. Yes, Panetta gives that narrow defense of CIA's statement. But the bulk of Panetta's statement implores the rest of CIA not to get hung up on the circus happening around them.

Panetta is doing two things. First, affirming that CIA has not misrepresented what got recorded in the briefing notes and that the language of the briefing notes is accurate—as far as that goes. And, at the same time, casting doubt on the full meaning of the statement while imploring the rest of CIA not to get distracted by yet another challenge to CIA's credibility.