

FactCheck.org: Pelosi's tortured denials

Contributed by Joe Miller
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Speaker of the House Nancy Pelosi said in February that she was "never" told that the CIA was using waterboarding in interrogations. Then in May she changed her story to say she was told, but still claimed it was not quite as early as the CIA said.

On that point she's contradicted, however, both by a CIA memo and by a Republican former congressman who got the same briefing she did. The current CIA director, a Democrat, says his agency's story, though not infallible, is "the most thorough information we have."

Prominent Republicans, including former Speaker Gingrich, are saying that Pelosi should step down because of this.

Who's right? It is clear that Pelosi has contradicted herself, and that she knew as early as 2003 that waterboarding was in use, long before she raised any public or private objection. But as to whether she was misled by CIA officials in a 2002 briefing, we can't say on the basis of evidence than is publicly available now. That judgment may have to wait for the history books.

Meanwhile, we present in our Analysis section a detailed time line of Pelosi's shifting accounts, the claims of her critics and the evidence produced so far.

Analysis

Pelosi said unequivocally in February: "I can say flat out, they never told us that these enhancement interrogations were being used." In April, she said that "we were not told" about the program at any briefing.

But a CIA memo released May 6 flatly contradicts those claims, stating that CIA personnel gave Pelosi "a description of the particular EITs [Enhanced Interrogation Techniques] that had been employed."

That briefing was in September 2002. Pelosi herself now admits that an aide told her about the interrogation techniques in 2003, but she still maintains that the CIA didn't tell her in 2002 that waterboarding had been used.

On May 14, she escalated her charge, claiming that the CIA deliberately misled legislators. That prompted several Republicans, including former House Speaker Newt Gingrich, former presidential candidate and Arkansas Gov. Mike Huckabee and Fox News commentator Sean Hannity to call for Pelosi's resignation.

Who's right?

So who is correct? Is Pelosi misleading Americans and then recklessly charging the CIA with deliberate misconduct to cover her tracks, as some Republicans are suggesting? Or is it the CIA memo that's false, perhaps put forth in an effort to claim there was tacit bipartisan approval for acts that some Democrats now say should be prosecuted as criminal?

Evidence is sketchy. So far, no recordings, verbatim transcripts or contemporary notes of Pelosi's 2002 briefing have surfaced, and for all we know none may even exist. All that's known publicly are conflicting, after-the-fact accounts. So we simply can't determine exactly what the CIA told Pelosi in 2002, or exactly when she became aware of what was going on.

One thing is clear: Pelosi herself now concedes that she knew about the CIA program – including the waterboarding – far earlier than she had led the public to believe. Her calls for a "Truth Commission" come six years after she now admits that she first learned about the CIA enhanced interrogation program.

In what follows, we'll lay out what both sides are saying, and leave it to our readers to judge.

She said

We start with a February exchange between Pelosi and MSNBC's Rachel Maddow, a liberal commentator who pressed the speaker to explain why she did nothing after being briefed on the techniques in Sept. 2002, at a time when she was the highest-ranking Democrat on the House Intelligence Committee. Pelosi reacted defensively, denying that the CIA told her that the harsh techniques were actually in use:

Maddow (Feb. 25): “September, 2002, you were briefed on CIA, detention issues and enhanced interrogation issues. Because of those briefings – and I know that you expressed concern for the NSA after that October 2001 briefing. You released that publicly in 2006. But you didn't express public concerns at the time after those briefings.”

Pelosi: “The fact is, they did not brief … well, first of all, we're not allowed to talk about what happens there, but I can say they did not brief us with these enhanced interrogations that were taking place. They did not brief us. They were talking about an array of interrogations that they might have at their disposal.”

Maddow: “Techniques in the abstract, as if they were not being used?”

Pelosi: “We were never told they were being used.”

Maddow: “You were told they weren't being used?”

Pelosi: “Well, they just talked about them, but – the inference to be drawn from what they told us was that these are things that we think could be legal. And we have a difference of opinion on that. But they never told us that they were being used, because that would be a different story altogether. ... And they know that I cannot speak specifically to the classified briefing of that kind. But I can say flat out, they never told us that these enhancement interrogations were being used.”

In an April 23 news conference, Pelosi made an even stronger claim, saying that "we" were not told of the use of waterboarding at the September 2002 briefing "or any other briefing":

Pelosi (April 23): “At that or any other briefing, and that was the only briefing that I was briefed on in that regard, we were not – I repeat, we 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. And they further — further, the point was that if and when they would be used, they would brief Congress at that time. ... 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."

Up to this point Pelosi had been adamant that the CIA never informed her that the "techniques" had actually been used on any prisoners. Her April statement broadened the claim even further by stating that "we" (which we take to mean herself and other Democrats) were not told at any briefing that these techniques were being used.

Pelosi backpedals

CIA Seal Then came the memo, released on May 6, with a first line that appears to drive a stake through the heart of Pelosi's account of that Sept. 2002 briefing:

CIA memo: Briefing on EITs [Enhanced Interrogation Techniques] on Abu Zubaydah, background on authorities, and a description of the particular EITs that had been employed.

After that, the backpedaling began. Pelosi said at a news conference on May 14:

Pelosi (May 14): "The CIA briefed me only once on enhanced interrogation techniques in September 2002 in my capacity as ranking member of the Intelligence Committee. I was informed then that the Department of Justice opinions had concluded that the use of enhanced interrogation techniques were legal. The only mention of waterboarding at that briefing was that it was not being employed. Those conducting the briefing promised to inform the appropriate members of Congress if that technique were to be used in the future... Five months later, in February 2003, a member of my staff informed me that the Republican chairman and the Democratic ranking member of the Intelligence Committee had been briefed about the use of certain techniques which had been the subject of earlier legal opinions."

By her own account, by February 2003, Pelosi knew what the CIA was doing, regardless of whether or not she heard it directly from the CIA. And she knew at the very least that the CIA had informed the Republican chairman of the Intelligence Committee and Democratic Rep. Jane Harman of California, who by that time had replaced Pelosi as the ranking minority member on the committee.

But Pelosi has never wavered from her assertion that at her Sept. 2002 briefing, the CIA presented its interrogation program as a theoretical possibility and not as a *fait accompli*. That omission, Pelosi said, amounts to deliberately misleading members of Congress.

They said

The CIA has a different account. On May 6, the agency released a 10-page listing of all its briefings to members of Congress on "enhanced interrogation techniques." First on that list is a Sept. 4, 2002, briefing to Pelosi and Republican Rep. Porter Goss of Florida, who was then chair of the House Intelligence Committee. (Pelosi would soon give up her position as ranking minority member on the committee to take over as House minority leader; Goss would later be appointed head of the CIA.)

As we've said before, the memo contradicts Pelosi's story. We know that the CIA had already waterboarded Abu Zubaydah in August 2002. So if CIA officials really did brief Pelosi and Goss on techniques used on Zubaydah, as the memo clearly states, then Pelosi had to know that waterboarding was more than a theoretical possibility.

What's more, Goss backs up the CIA's version of events, writing in an opinion piece for *The Washington Post* that:

Goss: "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. This was not a one-time briefing but an ongoing subject with lots of back and forth between those members and the briefers. 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."

Michigan Rep. Peter Hoekstra, the current ranking Republican on the House Intelligence Committee, likewise sides with the CIA, though he overstates the case somewhat. Hoekstra claims in the *Wall Street Journal*: "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." Even the CIA hasn't gone that far. The much-disputed briefing with Goss and Pelosi took place Sept. 4, 2002. But the CIA had begun waterboarding at least a full month earlier. Still, Hoekstra does claim that congressional leaders knew of the activities in the fall of 2002, just as the CIA claims.

And even one of Pelosi's fellow Democrats, CIA Director Leon Panetta, is standing by the CIA's version. He says "contemporaneous records" from 2002 back up the accounts given in the 10-page memo released May 6. In a memo to CIA employees, and posted on the agency's Web site May 15, Panetta defended his agency:

Panetta (May 15 memo): "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."

Whom do you trust?

So whose story should we believe? The politician who has changed her story already? Or the government agency with its specific time line supported by one of the lawmakers it briefed and also by Panetta? Normally we'd say that's a pretty easy call. But things aren't quite so simple. There are reasons for thinking that the CIA memos aren't all that reliable either.

For one thing, while Panetta says the CIA's 10-page summary of briefings is "the most thorough information we have," he also admits the possibility that it may not be entirely correct. He said in cover letters to chairman of the House Intelligence Committee, Rep. Silvestre Reyes of Texas and to ranking-member Rep. Peter Hoekstra of Michigan, that the account is based on the recollections of CIA officials and on memos created for the record, but he left it to the committee "to determine whether this information is an accurate summary of what actually happened."

Panetta (May 5 letter to Silvestre Reyes): "This letter presents the most thorough information we have on dates, locations, and names of all Members of Congress who were briefed by the CIA on enhanced interrogation techniques. This information, however, is drawn from the past files of the CIA and represents MFRs [memoranda for the record] 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."

And sure enough, three different legislators have disputed various details in the CIA's account of the briefings.

Former Sen. Bob Graham, a Democrat who in September 2002 served as chair of the Senate Intelligence Committee, said in an interview with the Huffington Post that prior to the release of the memo, the CIA initially told him that CIA records indicated he'd been briefed four times on torture policies.

Graham, however, has rather famously chronicled pretty much every aspect of his life (right down to, say, what he puts in his pockets each day) since his first run for governor of Florida in 1977. Graham checked his notebooks and discovered that, in fact, he was briefed only once, on Sept. 27, 2002. Graham said he informed CIA officials of the discrepancy, telling NPR that after the agency reviewed its records "they indicated that I was correct. Their information was in error. There was no briefing on the first three of four dates."

One CIA official later reportedly offered an explanation for the discrepancy to Spencer Ackerman, who published a story in the liberal-leaning Washington Independent quoting an unnamed "U.S. intelligence official familiar with the briefings" as saying the other three briefings may have involved discussions of detainee interrogations generally, but not the so-called "enhanced interrogation techniques." Graham, however, has said that he has no records of the three disputed briefings recorded in his notebooks.

Since then, two other Democrats have come forward to dispute the accuracy of the CIA memos. An aide to West Virginia Sen. Jay Rockefeller, former chairman of the Senate Intelligence Committee, told Politico that the memo showed Rockefeller attending a Feb. 4, 2003, briefing that he did not in fact attend. The CIA memo includes Rockefeller's name with an asterisk, noting that while Rockefeller did not attend the briefing, he was individually briefed later. The aide claims that the individual briefing was actually seven months later, on Sept. 4, 2003.

Moreover, the aide took exception to the claim that the briefings disclosed the full extent of the interrogation program, saying that "Senator Rockefeller has repeatedly stated he was not told critical information that would have cast significant doubt on the program's legality and effectiveness."

Most recently, Rep. David Obey, a Wisconsin Democrat, wrote a letter to Panetta claiming that yet another detail is wrong. The memo lists a congressional staffer as having attended a Sept. 19, 2006, briefing. The staffer, however, tells Obey that while he did go to the briefing room, he was turned away by the CIA briefers.

Nor are accusations that the CIA misled Congress particularly new. In May 2006, The Washington Post reported that Mary McCarthy, a former CIA deputy inspector general, "became convinced that 'CIA people had lied' " during a Senate briefing in which CIA officials said that the agency had never violated international treaties prohibiting cruel, inhumane or degrading treatment of prisoners. McCarthy had been fired a month earlier, for leaking classified information to Post reporter Dana Priest.

The CIA's most recent defense is more tepid. Responding to Obey's charge that parts of the CIA memo are incorrect, CIA spokesman Paul Gimigliano told the Washington Independent on May 19 that:

Gimigliano: "While CIA's information has Mr. Juola attending briefings on September 19, 2006 and October 11, 2007, there are different recollections of these events, which Mr. Obey's letter describes. As the agency has pointed out more than once, its list — compiled in response to congressional requests — reflects the records it has. These are notes, memos, and recollections, not transcripts and recordings."

So we're left with Democrats offering one (not always entirely accurate) story and the CIA and some Republicans offering a different (and, again, not always entirely accurate) story.

As Panetta told CIA employees in his May 15 memo, "Ultimately, it is up to Congress to evaluate all the evidence and reach its own conclusions about what happened." That goes for the rest of us. More definitive evidence may yet emerge, but until then everyone will have to reach their own conclusions about how much Pelosi and other members of Congress were told.

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