

# IT'S MORE THAN JUST WHETHER THE E-MAILS ARE ON THE BACK-UPS

A number of you sent me the AP article reporting that the White House will have to 'fess up to whether or not the millions of missing emails are on the back-up tapes.

A federal magistrate ordered the White House on Tuesday to reveal whether copies of possibly millions of missing e-mails are stored on computer backup tapes.

[snip]

Facciola gave the White House five business days to report whether computer backup tapes contain e-mails written between 2003 and 2005.

But the actual order is more interesting than that. Here's what Facciola ordered:

With that understanding, the court will order the defendants to provide answers to the following questions:

1. Are the back-ups catalogued, labeled or otherwise identified to indicate the period of time they cover?
2. Are the back-ups catalogued, labeled or otherwise identified to indicate the data contained therein?
3. Do the back-ups contain emails written and received between 2003-2005?
4. Do the back-ups contain the emails said to be missing that are the subject of this lawsuit?

See, I'm guessing the answer to the more general question—whether the missing emails are on the

backup tapes—will be "no." But consider what it would mean if the four questions are answered as follows:

1. Yes, the back-ups are labeled to indicate the period of time they cover.
2. Yes, the back-ups are labeled to identify the data contained there-in.
3. Yes, the back-ups contain e-mail written between 2003 and 2005.
4. No, the back-ups do not contain the emails that are the subject of this lawsuit.

I'm really not sure of number 2 [see the update below for smarter speculation]—or, for that matter, any of my suggested answers. But I think it quite likely the White House will respond (or not respond) in the next 5 days to say that, yes, they know what are on the tapes, but no, most of the missing emails are not on there.

I say that for two reasons. First, review this speculative piece I wrote about when Fitzgerald got particular emails (you know, incriminating ones from Rove to Hadley) during his Plame investigation. I speculated then that Fitzgerald was suspicious about the dearth of emails at least as early as March 2004 (he asked Libby about it), didn't get the Rove-Hadley email until October 2004 (when Rove explained why he forgot but then remembered talking to Cooper), but didn't start pursuing the missing emails aggressively until October 2005 (which is precisely when the Office of Administration "discovered" there were a bunch of emails missing). Then, in January 2006, Fitzgerald told Libby's lawyers that,

In an abundance of caution, we advise you that we have learned that not all email of the Office of Vice President and Office of President for certain time periods in 2003 was preserved through the normal archiving process on the

White House computer system.

But he didn't have the emails yet, not until February 6. So in spite of the fact that (via whatever means) Office of Administration "discovered" in October 2005 that they hadn't been archiving email properly, they hadn't gotten Fitzgerald the missing email until January to February 2006, three months later.

So they certainly weren't able to waltz down to the basement and find the backup tape to reconstruct Rove's (and Libby's) missing emails—at least not very easily.

But then there's this bit, from Gold Bars Luskin (the CNN link on which this was based is dead, but here's a similar Luskin statement).

The prosecutor probing the Valerie Plame spy case saw and copied all of Rove's e-mails from his various accounts after searching Rove's laptop, his home computer, and the handheld computer devices he used for both the White House and Republican National Committee, Luskin said.

The prosecutor, Patrick Fitzgerald, subpoenaed the e-mails from the White House, the RNC and Bush's re-election campaign, he added.

[snip]

Rove voluntarily allowed investigators in the Plame case to review his laptop and copy the entire hard drive, from which investigators could have recovered even deleted e-mails, Luskin said.

As the investigation was winding down, Luskin said, prosecutors came to his office and reviewed all the documents — including e-mails — he had collected to be sure both sides a complete set.

Now what's unclear is whether Fitzgerald found

any additional emails doing all those hard drive scans, or whether the Office of Administration was able to reconstruct them all themselves (though Jeffress said that Office of Administration is the entity which discovered the OVP emails, at least—does that mean they used a backup tape??). But it seems clear that it was no easy task in October 2005 to just go find emails missing from Rove's and OVP's document production.

Which suggests that 1) Office of Administration knows what they've got, and 2) at least in 2005, the missing emails weren't immediately accessible.

Again, the stuff related to Fitzgerald's investigation is all speculative. But it might suggest that OA is going to have to come back, just in time for the hearing on the destroyed torture tape on January 16, and explain that they do have backup tapes, but that the missing emails are remarkably missing from the backup tapes, too.

In any case, we should know a good deal more in just five days, unless BushCo tells yet another Federal Judge to go fuck himself.

**Update:** MadDog, who knows a thing or two about computers, says the backup tapes would most likely not be labeled (that is 1 and 2 would be "no").

Based upon my techie experiences, no, the backups are not "catalogued, labeled or otherwise identified to indicate the data contained therein."

Backups are typically only identified by the date and the system backed up. Content would be unknown other than something as generic as "WH system emails" or "OVP My Document folders".

The *only* way that content would be identified would be if someone personally examined each backed-up

record or constructed a software program to scan for certain keywords (kinda like how one would imagine the NSA would scan for stuff on all the databases that were warrantlessly eavesdropped upon).

Which brings one to the *real* hot fact: If someone in the WH is claiming that *specific* stuff is missing (i.e. Rove's Abramoff involvement, various parties including Rove's involvement in Valerie Plame Wilson's betrayal, etc.), then be sure that *they* have done that scanning to arrive at that position.

You can't have that kind of specificity without having done the dirty work to find out just *what* is on the backups.

And here's William Ockham, who also knows a thing or two about computers:

The answers to 1 and 2 should be straightforward. The answer to 3 will be interesting. I would expect by this time the answer to 4 would be some of them.

Btw, the WH has spent some money this year on consultants who should have been able to help them.

Thanks to both MD and W0.