

ANALOGIES FOR YOO: THE MERCK SCANDAL

There's been more discussion of the appropriate analogy to use to determine whether or not John Yoo should—or could—be fired from Berkeley. But I wonder whether the incipient Vioxx scandal won't offer us the best analogy. As the NYT reports, Merck appears to have sent out drafts of reports to professors to have them submit them for publication under their own name.

Combing through the documents, Dr. Ross and his colleagues unearthed internal Merck e-mail messages and documents about 96 journal publications, which included review articles and reports of clinical studies. While the Ross team said it was not necessarily raising questions about all 96 articles, it said that in many cases there was scant evidence that the recruited authors made substantive contributions.

One paper involved a study of Vioxx as a possible deterrent to Alzheimer's progression.

The draft of the paper, dated August 2003, identified the lead writer as "External author?" But when it was published in 2005 in the journal *Neuropsychopharmacology*, the lead author was listed as Dr. Leon J. Thal, a well-known Alzheimer's researcher at the University of California, San Diego. Dr. Thal was killed in an airplane crash last year.

The second author listed on the published Alzheimer's paper, whose name had not been on the draft, was Dr. Ferris, the New York University professor. Dr. Ferris, reached by telephone Tuesday, said he had played an active role in the research and he was

substantially involved in helping shape the final draft.

“It’s simply false that we didn’t contribute to the final publication,” Dr. Ferris said.

A third author, also not named on the initial draft, was Dr. Louis Kirby, currently the medical director for the company Provista Life Sciences. In an e-mail message on Tuesday, Dr. Kirby said that as a clinical investigator for the study he had enrolled more patients, 109, than any of the other researchers. He also said he made revisions to the final document.

“The fact that the draft was written by a Merck employee for later discussion by all the authors does not in and of itself constitute ghostwriting,” Dr. Kirby’s e-mail message said.

This story is just breaking. But I suspect that there will be substantial scrutiny of the scientists involved, or at least those still at research universities. And I suspect we’ll start seeing longer lists of professors who rented their name out in support of drug companies.

Of course, this analogy is perhaps best suited to Jay Bybee, since his own name graces the first torture memo, in spite of the fact that John Yoo appears to have been the OLC lawyer most involved.

But isn’t there substantial evidence that Yoo put his name on a number of OLC opinions that were, in turn, substantially written by David Addington? As Peterr pointed out yesterday, there are mortal academic sins beyond criminal prosecution. I suspect we’re about to hear a whole lot of discussion about the mortal sin of lending your professional reputation and the appearance of objective review to public documents. Which is, after all, precisely what John Yoo did for Dick Cheney.