

YOO ISSUED AN OPINION ON 9/11 ABOUT SCRAMBLING PLANES

Still reading through the Yoo side of the Esquire transcript. At times, it's very frustrating, since Esquire gave only Yoo's side of the conversation, without the questions. But by putting this passage of the final article...

So let's go back to that moment in the heat of battle. The way Yoo tells the story, he was sitting at his desk at the Justice Department when the first plane hit the World Trade Center. He had only been working there two months, hired to answer the White House's questions on foreign-policy laws at a time when the biggest legal issue before him was a treaty about polar bears. When the order came to evacuate Washington and people began heading out into the streets, someone from the attorney general's office told him to stick around.

Soon the questions came:

Is this a war?

Do we need to declare war?

Can we scramble planes?

And again: *Is this a war?*

Together with these two answers from the transcript...

Yes, that was a question [Can planes be scrambled to shoot down any remaining hijacked aircraft]. That was earlier: Can we use force?

I must have. I can't tell you what I said. No, I don't think that's actually public. Can you use force in response? What kind of force? What are the

standards that guide the use of force?

I think it's fairly safe to say that sometime on 9/11, Yoo gave an opinion about whether or not the US could shoot down remaining hijacked planes.

Only he's not going to tell us what that opinion said.

The opinion is relevant, of course, because one thing Dick Cheney attempted to hide from the 9/11 Commission was that he—without consulting George Bush—issued an order to shoot down any remaining planes. He even tried (unsuccessfully) to get the 9/11 Commission to reverse its finding that Cheney gave the shoot-down order before speaking to Bush.

Now, Yoo's opinion almost certainly came after Cheney issued the order and after he told Bush he had made it. According to Libby's notes, Cheney issued the order between 10:15 and 10:18; according to Ari's notes, Cheney informed Bush of the ~~opinion~~ shoot-down order at 10:20. In other words, Yoo's opinion probably didn't contribute to Cheney's extra-constitutional order.

Still, it's notable that they went to Yoo for such an opinion, presumably after the fact. And it's notable that this is yet another of Yoo's opinions they haven't released.

Update: fixed unclear chronology on shoot-down order per phred.