

OPR REPORT ALTERED TO COVER BUSH DOJ MALFEASANCE

✘ Mike Isikoff and Dan Klaidman put up a post about an hour ago letting the first blood for the Obama Administration's intentional tanking of the OPR (Office of Professional Responsibility) Report. In light of Obama's focused determination to sweep the acts of the Bush Administration, no matter how malevolent, under the rug and "move forward" the report is not unexpected. However, digesting the first leak in what would appear to be a staged rollout is painful:

...an upcoming Justice Department report from its ethics-watchdog unit, the Office of Professional Responsibility (OPR), clears the Bush administration lawyers who authored the "torture" memos of professional-misconduct allegations.

While the probe is sharply critical of the legal reasoning used to justify waterboarding and other "enhanced" interrogation techniques, NEWSWEEK has learned that a senior Justice official who did the final review of the report softened an earlier OPR finding. Previously, the report concluded that two key authors—Jay Bybee, now a federal appellate court judge, and John Yoo, now a law professor—violated their professional obligations as lawyers when they crafted a crucial 2002 memo approving the use of harsh tactics, say two Justice sources who asked for anonymity discussing an internal matter. But the reviewer, career veteran David Margolis, downgraded that assessment to say they showed "poor judgment," say the sources. (Under department rules, poor judgment does not constitute professional misconduct.) The shift is

significant: the original finding would have triggered a referral to state bar associations for potential disciplinary action—which, in Bybee’s case, could have led to an impeachment inquiry.

The news broken in the Newsweek Declassified post is huge, assuming it is accurate, and the sense is that it is. In spite of the weight of the report, the report tucks the substantive content behind the deceptively benign title “Holder Under Fire”. The subject matter is far too significant though for it to have been casually thrown out. Consider this description of the OPR finding on the nature and quality of the critical August 1, 2002 Torture Memo:

The report, which is still going through declassification, will provide many new details about how waterboarding was adopted and the role that top White House officials played in the process, say two sources who have read the report but asked for anonymity to describe a sensitive document. Two of the most controversial sections of the 2002 memo—including one contending that the president, as commander in chief, can override a federal law banning torture—were not in the original draft of the memo, say the sources. But when Michael Chertoff, then-chief of Justice’s criminal division, refused the CIA’s request for a blanket pledge not to prosecute its officers for torture, Yoo met at the White House with David Addington, Dick Cheney’s chief counsel, and then-White House counsel Alberto Gonzales. After that, Yoo inserted a section about the commander in chief’s wartime powers and another saying that agency officers accused of torturing Qaeda suspects could claim they were acting in “self-defense” to prevent future terror attacks, the sources say. Both legal claims have long since been

rejected by Justice officials as overly broad and unsupported by legal precedent.

Hard to figure how this finding and conclusion could be determined by David Margolis to warrant the “softening” of the original finding of direct misconduct. Margolis is nearly 70 years old and has a long career at DOJ and is fairly well thought of. Margolis was tasked by Jim Comey to shepherd Pat Fitzgerald’s Libby investigation. In short, the man has some bona fides.

Margolis is, however, also tied to the DOJ and its culture for over forty years, not to mention his service in upper management as Associate Attorney General during the Bush Administration when the overt acts of torture and justification by Margolis’ contemporaries and friends were committed. For one such filter to redraw the findings and conclusions of such a critical investigation in order to exculpate his colleagues is unimaginable.

One thing is for sure, with a leak like this being floated out on a late Friday night, the release of the full OPR Report, at least that which the Obama Administration will deem fit for the common public to see, is at hand. Mike Isikoff and Dan Klaidman have made sure the torturers and their enablers can have a comfortable weekend though. So we got that going for us.