

THE EMAILS THE BUSH LAWYERS WERE SO WORRIED ABOUT

As I noted yesterday (though I got the details slightly wrong), the OPR report revealed that a number of John Yoo and Patrick Philbin's emails had been deleted (and that Goldsmith's had been deleted but were subsequently recovered).

OLC initially provided us with a relatively small number of emails, files, and draft documents. After it became apparent, during the course of our review, that relevant documents were missing, we requested and were given direct access to the email and computer records of Yoo, Philbin, Bybee, and Goldsmith. However, we were told that most of Yoo's email records had been deleted and were not recoverable. Philbin's email records from July 2002 through August 5, 2002 – the time period in which the Bybee Memo was completed and the Classified Bybee Memo (discussed below) was created – had also been deleted and were reportedly not recoverable. Although we were initially advised that Goldsmith's records had been deleted, we were later told that they had been recovered and we were given access to them.

That's particularly interesting, because several times in the year-long lead up to the release of the report, we've seen reports that Bush Administration members were squirmy about the number of emails OPR had gotten. Michael Isikoff first reported concern from Bush lawyers that OPR got emails from the memo contributors last February.

OPR investigators focused on whether the memo's authors deliberately slanted

their legal advice to provide the White House with the conclusions it wanted, according to three former Bush lawyers who asked not to be identified discussing an ongoing probe. One of the lawyers said he was stunned to discover how much material the investigators had gathered, including internal e-mails and multiple drafts that allowed OPR to reconstruct how the memos were crafted.

I wondered whether reappearing emails was of particular concern to those trying to cover up Bush crimes here. Then there was the remarkably bad NYT story from June 6, 2009, that not only revealed the presence of the emails and included the damning Comey ones, but spun them just as Steven Bradbury would have liked them, as an attack on Comey rather than what they were, an indictment of the drafting process.

All of this anxiety about emails could just be an expression of Bradbury's worries (retrospectively, it looks much more likely than it already did that he was the source of the emails and the spin to the NYT).

If so, though, that's particularly interesting since we know that OPR originally got a very limited batch of emails from Steven Bradbury (this was in 2004, before he would write his own torture memos).

On August 31, 2004, Bradbury gave OPR copies of unclassified documents relating to the Bybee Memo, including email and documents from the computer hard drives and files of the former OLC attorneys who worked on the project.

But reports of the anxiety about emails are all the more interesting given the emails that **are** included in the report. Perhaps the most damning example is the email in which Yoo refers to Abu Zubaydah as "Boo Boo" (which Spencer reported on Friday):

On July 30,2002, Yoo asked [Koester] by email, “[D]o we know if Boo boo is allergic to certain insects?” [Koester] responded,“No idea, but I’ll check with [redacted].

In addition, email evidence provided the basis for [Special thanks, again, to burnt for making searchable copies of these reports that made compiling this list much easier]:

- The start date of the Bybee One drafting process, April 11, 2002
- Timing or summaries of key meetings, including some with Alberto Gonzales
- Yoo’s comments on drafts sent to Jennifer Koester, his side-kick in the writing process
- Details of Bybee’s involvement in the drafting process
- Proof that Yoo didn’t intend to write the Commander-in-Chief or possible defenses before his July 16, 2002 meeting with Gonzales (and probably David Addington and/or Tim Flanigan)
- Evidence that Yoo consulted with a university law professor on common law defenses (the second draft, but not the first and final, shows that this was a university professor)
- Indication that Yoo and

- Koester didn't start the Bybee Two (Techniques) memo until July 25, 2002 or later
- Details on the pressure the White House was putting on Yoo to get the memos done
 - Details of who received the opinions including—a fact that Yoo later denied—DOD
 - Complaints Koester received from DOD's Working Group that the Yoo Memo was too extreme
 - Proof that both Michael Chertoff and John Yoo told CIA's Inspector General they would wait to investigate alleged crimes until he was done with his investigation
 - Goldsmith's opinions about the Bybee One Memo, including his judgment that it constituted a "blank check"
 - Comey's emails documenting his concerns about the May 10, 2005 Combined Memo and his belief that Bradbury was responding to White House pressure because he wanted the AAG position

In other words, the emails provide a key piece of evidence that the White House was responsible for the way in which the Bybee One memo served as a blank check, as well as the pressure the White House put on the lawyers as they were drafting the memos.

The emails put the White House squarely in the drafting process.

But that's all with most emails from John Yoo and Patrick Philbin still disappeared.

It sort of makes you all the more curious about what was in the Yoo and Philbin emails that got deleted, huh?