

OPR REPORT TIMELINE

In response to the news that David Margolis spiked the misconduct conclusion in the OPR Report on OLC justifications for torture, I wanted to put together a timeline of its construction. Two things stick out. First, the role of Mary Patrice Brown—who replaced Marshall Jarrett at a time when OPR was backing off its offer of transparency—deserves further scrutiny in this report. When she presented the report to Holder in August, she apparently recommended that he reopen investigations into torture.

Also, I still think the timing suggests DOJ delayed its release to protect Yoo in the Padilla suit.

January 4, 2008: Padilla sues Yoo.

February 12, 2008: Senators Durbin and Whitehouse request that OPR investigate torture authorizations

February 18, 2008: Marshall Jarrett informs Durbin and Whitehouse that torture authorizations included in OPR investigation of OLC, agrees to share report with them and—possibly—release an unclassified public version

Late December 2008: Draft of OPR submitted, Michael Mukasey and Mark Filip demand that Yoo, Bybee, and Bradbury get to respond

February 14, 2009: Isikoff reports that OPR report came to harsh conclusions of OLC lawyers' work; reports Mukasey and Filip allowance for lawyer response

February 16, 2009: Whitehouse and Durbin inquire about process used with OPR report

March 6, 2009: Hearing in Padilla-Yoo law suit

March 25, 2009: OPR response (signed by M. Faith Burton, Acting AAG) to Whitehouse and Durbin states Mukasey/Filip comments already integrated, OLC lawyer counsel in process of

reviewing report; it doesn't mention "career prosecutor" review:

When the review and comment [from Yoo, Bybee, and Bradbury's lawyers] is concluded, OPR intends to review the comments submitted and make any modifications it deems appropriate to the findings and conclusions. OPR will then provide a final report to the Attorney General and Deputy Attorney General. After any additional review they deem appropriate, the department will determine what disclosures should be made.

The letter backs off Jarrett's earlier promise to release the report:

In determining appropriate disclosures, we will be mindful of the considerable interest that Congress has previously expressed in connection with this matter and will seek to accommodate the information needs of our oversight committees in response to requests from their chairmen. While we appreciate your request for a disclosure commitment, we can only fully evaluate the scope of appropriate disclosures once the review process is completed. We trust you understand that those decisions depend in part on the content and conclusions of the OPR final report and the outcome of any further Departmental review.

March 31, 2009: Durbin and Whitehouse reply to OPR letter

April 8, 2009: Holder names Mary Patrice Brown to replace former OPR head, Marshall Jarrett

April 29, 2009: Leahy invites Bybee to testify to Senate Judiciary Committee; Bybee panics in response

May 4, 2009: According to AAG Ronald Welch,

deadline for Yoo, Bybee, and Bradbury response to OPR report; on that day, Welch responds to Durbin and Whitehouse laying out the following as “normal” process for OPR reports:

In the past, former Department employees who were subjects of OPR investigations typically have been permitted to appeal adverse OPR findings to the Deputy Attorney General’s Office. A senior career official usually conducted that appeal by reviewing submissions from the subjects and OPR’s reply to those submissions, and then reaching a decision on the merits of the appeal. Under this ordinary procedure, the career official’s decision on the merits was final. This appeal procedure was typically completed before the Department determined whether to disclose the Report of Investigation to the former employees’ state bar disciplinary authorities or to anyone else. Department policy usually requires referral of OPR’s misconduct findings to the subject’s state bar disciplinary authority, but if the appeal resulted in a rejection of OPR’s misconduct findings, then no referral was made. This process afforded former employees roughly the same opportunity to contest OPR’s findings that current employees were afforded through the disciplinary process. While the Department has previously released public summaries of OPR reports under some circumstances, public release of the reports themselves has occurred only rarely. In the past, the release of a public summary occurred only after the subjects were afforded an opportunity to appeal any adverse findings.

The May 4 letter also informed the Senators of the CIA review.

May 6, 2009: WaPo reports OPR report still

recommends sanctions against Yoo and Bybee

June 12, 2009: Judge rules Padilla suit can move forward

June 17, 2009: Whitehouse reveals that CIA conducting "substantive comment and classification review"

July 9, 2009: Yoo appeals decision on Padilla suit—and DOJ stops representing Yoo; Miguel Estrada would take on that role

July 12, 2009: Scott Horton reports that reading OPR Report was one thing that convinced Eric Holder to launch criminal review of torture

Prior to August 24, 2009: OPR submits report to Holder, recommends reopening criminal investigation into torture

August 24, 2009: Holder announces criminal investigation, citing (among other things) OPR report

November 16, 2009: Yoo submits opening brief in Padilla suit appeal

November 18, 2009: Holder announces OPR report due out "this month;" Court grants government extension to December 3 to submit amicus brief

November 20, 2009: Padilla requests extension—because of delay in government brief—until January 15

December: Margolis, purportedly reviewing OPR report, out sick (though reports say Yoo's lawyer making last appeal for changes)

December 3, 2009: DOJ submits amicus brief claiming that OPR can address Padilla's concerns

December 29, 2009: Yoo starts book publicity

January 18, 2010: Padilla submits response to appeal

January 29, 2010: Klaidman and Isikoff report OPR conclusions have been altered