

THE WHITE HOUSE RESPONSE ON BACKUP TAPES

Hey, what do you know? The White House still sufficiently recognizes the third branch of government to respond to a judge's request regarding all its lost emails. And as I suspected, the answer to whether or not the back-up tapes for White House emails include the emails not properly archived between March 2003 and October 2005 is, partly, "no." As the CIO of the Office of Administration, Theresa Payton, explains, the White House recycled its backup tapes up until October 2003, so it would not have any missing emails from March 2003 (the beginning of the period when the emails started going missing) and October 2003 (the period when the OA stopped recycling its backup tapes).

Prior to October 2003 and continuing through 2005 and to the present, this office has regularly created back-up tapes for the EOP Network, which includes the system's email servers. Consistent with industry best practices relating to tape media management for disaster recovery back-up systems, these tapes were recycled prior to October 2003. In October 2003, this office began preserving and storing all back-up tapes and continues to do so.

But watch how Payton pretends that this doesn't mean the White House might be missing a chunk of emails.

For that reason [the post-October 2003 preservation of backup tapes], emails sent or received in the 2003-2005 time period should be contained on existing back-up tapes.

[snip]

...in view of this office's practice in the 2003-2005 time period of regularly creating back-up tapes for the EOP Network, which includes servers containing emails, and in view of this office's practice of preserving all such back-up tapes from October 2003 to the present, the back-up tapes should contain substantially all the emails sent or received in the 2003-2005 time period.

As everyone who has read this can understand clearly, Payton's statement doesn't mean what it says. Rather, it is an admission that the White House may well be missing emails written or received between March 2003 and October 2003.

Such a misleading response is only one of the ways in which this response is disingenuous.

Payton explains in her statement that she has been CIO since May 2006—more than six months after the disappearing emails stopped disappearing, and two months after Fitzgerald received the missing OVP emails. Since Payton wasn't present for this documented example of email recovery, she can speak in hypotheticals about the whole process, even while she appears to admit that the tapes have been used to restore data in the past.

The back-up tapes **have been used** to restore information that is not otherwise available on the EOP Network. When applied to email recovery, the process is complex, labor intensive and costly. By way of hypothetical example, a request to recover a specific file(s) from a particular date or date range within the period of 2003-2005 would be forwarded to the OCIO [that is, to Payton]. The OCIO would then ordinarily consult a media database, similar to a catalogue or back-up tape index, to identify a range of tapes that correspond to that request. In this

process, the OCIO may pull tape sets backed up prior to and/or subsequent to the target date period to ensure they have the full population of potential tape sets that may contain the requested file. Additionally, the OCIO would then restore the data-type environment, applicable software, and/or information, and then conduct a search for the information requested. [my emphasis]

Mind you, Payton isn't admitting this has been done (I'm not sure it has, but it seems likely it was in the Plame case), she's just speaking hypothetically.

But the real disingenuous stance she takes has to do with her treatment of CREW's claim that a bunch of email has disappeared. Payton writes,

I am aware of a chart created by a former employee within the OCIO that purports to identify certain dates and EOP components for which the chart's creator appears to have concluded that certain EOP components were missing emails on certain dates in the 2003-2005 time period. Specifically, the chart appears to have concluded that some components on some dates had either (i) a lower-than-expected number of emails preserved in the normal electronic archiving process, or (ii) no emails preserved in the normal electronic archiving process. I believe this is what Plaintiffs refer to as the "detailed analysis."

The OCIO has reviewed the chart and has so far been unable to replicate its results or to affirm the correctness of the assumptions underlying it. Accordingly, this office has serious reservations about the reliability of the chart.

But here's how CREW describes this "chart."

... when the problem was uncovered the White House Office of Administration created **abundant documentation that included multiple estimates of the volume of missing email, not a single chart** that the White House now suggests is the only documentation. Could it be that having now destroyed the evidence documenting the missing email problem, the White House feels free to retreat from its acknowledgment to Mr. Fitzgerald that White House emails are missing? [my emphasis]

Lucky for us (ha!), Payton assures us she will shortly complete her own review.

...this office has undertaken an independent effort to determine whether there may be anomalies in Exchange email counts for any particular days resulting from the potential failure to properly archive emails for the 2003-2005 time period. That process is underway and we expect the independent assessment to be completed in the near term.

At the very least, the judge should ask for this review as soon as it is completed (heck, a deadline would be nice—after all, the White House responded the last time it got a deadline from this judge), as well as the name of the former employee who put together the "chart" in the first place.

I'd also love to have CREW ask whether Payton's assertions about the Executive Office of the President (EOP)'s emails hold true, as well, for OVP's emails, because Payton engages in some squirminess about Dick's emails. In her general description of the OCIO's duties, Payton explains that it serves both EOP and OVP.

The OCIO, which is an operating unit of OA, provides around-the-clock customer

service for all EOP components and the Office of the Vice President, consisting of more than 3000 users and customers, in excess of 200 servers, and over 100 applications.

This seems to suggest that she considers (as the White House has, at times, to protect Dick) OVP a separate entity from EOP. That's curious because the rest of Payton's assertions about the treatment of email backups refer to the "EOP network." Has OCIO been backing up Dick's emails in the same way it does Bush's?

For all its disingenuousness, Payton's statement is useful for one reason. It pinpoints the date when, if these emails and backups were deliberately deleted, that deletion was done: no later than October 2003. Which, of course, happens to be when DOJ started investigating the Plame leak.