

NO WONDER FITZGERALD NEVER OFFICIALLY CLOSED HIS INVESTIGATION

There were actually a number of notable revelations in today's oversight hearing on the missing emails, supplemented by the report released by the committee. For example, the hearing made it clear that the National Archives has been trying to get some answers about where the missing emails went since May 2007, to no avail. And that even as late as fall 2006—a year after the White House had discovered the missing emails—the White House did not reveal the missing emails to the National Archives.

Similarly, the hearing revealed that as of yesterday, the White House has done **nothing** to start retrieving the missing RNC emails.

Most alarming, though, are two details that may explain why Fitzgerald never formally closed his investigation. It's still not clear he has all the missing emails.

First, the hearing and the report revealed that until 2005, the email "archives" were available to anyone within EOP.

Until mid-2005, the system that the White House used for preserving e-mails had serious security flaws. According to Mr. McDevitt, "In mid-2005 ... a critical security issue was identified and corrected. During this period it was discovered that the file servers and the file directories used to store the retained email ... were accessible by everyone on the EOP network." Mr. McDevitt informed the Committee that the "potential impact" of this security flaw was that there was "[n]o verification that data retained has not been modified."

To understand why this is important, consider the famous Rove-Hadley email recording Matt Cooper's call. The email said,

Matt Cooper called to give me a heads-up that he's got a welfare reform story coming, When he finished his brief heads-up he immediately launched into Niger. Isn't this damaging? Hasn't the president been hurt? I didn't take the bait, but I said if I were him I wouldn't get Time far out in front on this.

The email has been puzzling on two levels. First, why wasn't it discovered? Since the trial, there are some potential explanations for this, not least that the White House may have searched on "Matthew Cooper" and "Joe Wilson" but not "Matt Cooper." We also know that Rove had email in a bunch of different locations, including the RNC servers. And that at least Jenny Mayfield left all official email discovery to the central search, ensuring the emails would not be found if the archives were incomplete for a given day; the same may be possible for Rove. In other words, we can explain why the email wasn't found, though that's not to say the fact that the email was not discovered is above suspicion.

But then there's something suspicious about the content of the email—Rove suggests that Cooper called to talk about welfare reform, not Wilson. Given the notes back and forth between Cooper and Cathie Martin, it seems clear that Cooper was calling **OVP** solely about Wilson (though he may have started asking those questions after speaking with Rove—he had definitely talked to Cathie Martin once before 12:45 on July 11, and seems to have emailed someone already with questions, but he spoke to Rove around 11:00). I've always suspected that Rove may have added that detail later, knowing that Cooper based a September 2003 welfare reform article on a later conversation, as a way to explain why Rove wouldn't have remembered that Cooper called

about Wilson. Here's the option I thought most likely to explain the content of the email, long before a lot of additional details became available.

The third method is to alter the content of the email at least once, to create an email that fit the search terms you know to have used, while still spinning the story like you'd want. This method probably requires the help of more people (some crack IT people). And it risks the same danger of discovery as the first option (why wasn't this found on a Cooper search?), plus the discovery of the altered data. But it might shift the time when the first discovery might happen. That is, if the FBI didn't find this email on its search, then it would offer the WH search some cover. "Well, the FBI didn't find it when they looked for Cooper's name either, so it's probably just something funky with the email."

How shocking to learn, then, that until 2005 (at least according to Steven McDevitt, then in charge of this process), altering an email after the fact would have been very easy to accomplish. Anyone on the EOP network had access to that email, and there's no way of knowing whether it was tampered with or not.

And then there's one more revelation that really raises questions of whether Fitzgerald could determine whether there was any funny business with the emails.

The difficulties the White House encountered in recovering e-mails for Special Counsel Patrick Fitzgerald also undermine its claim that the journaling system was adequate. According to documents provided and shown to the Committee, the journaling archive system contained no e-mails from the Office of the Vice President for important dates:

September 30, 2003, to October 6, 2003. In an effort to recover the e-mails, the White House restored backup tapes for these days. These backup tapes also contained no journaled e-mails or .pst files for those dates for the Office of the Vice President. The only e-mails that could be recovered and provided to the Special Counsel were e-mails that the White House was able to restore from the personal e-mail accounts of officials in the Vice President's office.

Just for kicks, here's a longer explanation of it.

According to this document, even after restoring backup tapes, the White House team was unable to find any journal files or .pst files for the Vice President's office during this period. The team's first effort involved restoring from the backup tape of the file servers that were used to store .pst files during the target period." This search uncovered "no messages ... that filled the gap." The team next restored from the backup tape the "server that contained the journal mailboxes for the target period." According to the document, the Journal mailboxes were examined and no messages for the target period were present in the journal mailbox."⁸³ The team then restored from the backup tape the personal mailboxes of officials in the Vice President's office and recovered messages from 70 individual users.

According to a document dated just four days later that was shown to Committee staff, but not provided to them, the White House team recovered 17,956 e-mails from these individual mailboxes on the backup tape and used these as their

basis to search for e-mails responsive to the Special Counsel's request. A restoration of personal mailboxes from a backup tape does not recover any e-mails deleted by the user before the backup tape was made. The fact that the White House could not find .pst files or journal files on backup tapes from this time period raises questions about the likelihood that these files will be found during the current search.

As far as I understand it (tech wizards, please correct me) this means there was no way to cross-check whether or not the email search had found all the responsive emails. As McDevitt explained,

Mr. McDevitt also warned that without a "mechanism to reconcile against what was originally retained by the system," it was impossible to be sure "that all records are retained in their complete and unmodified state."

Given that Patrick Fitzgerald was still getting Judy Miller on the record as to whether or not she exchanged emails with Scooter Libby during the trial,

Fitzgerald: Did you ever contact Mr. Libby by e-mail?

Miller: No. I did not.

Fitzgerald: Why not?

Miller: I don't believe I had Mr. Libby's e-mail because I don't believe he ever gave it to me.

I rather suspect Fitzgerald has his doubts about whether or not he had really received all the OVP emails (and note—Judy may well have emailed via Jenny Mayfield...)

But given the absence of any log for OVP email,

Fitzgerald probably still has those doubts.

No wonder Fitzgerald's investigation technically remains open. As he has said, if new evidence comes available, the investigation may go active again. And the White House is still trying to reconstruct all its missing emails.

Though given Ms. Payton's remarkably slow pace at reconstructing the missing emails, that might never happen, even if there were incriminating emails hidden in the bowels of the White House's ridiculous archiving practices.