

ZELIKOW'S DESTROYED MEMOS

Last night, as I was beginning my catalog of the interrogation reports used in the 9/11 Report, the former Executive Director of the 9/11 Commission was on Rachel Maddow, elaborating on his Foreign Policy article where he revealed how the Bush Administration destroyed his objections to the May 2005 Bradbury Memos.

Anonymous Liberal had a very good take on Zelikow's story (which basically matches what bmaz said to me via email). The destruction of Zelikow's memos is clear evidence of criminality.

That's an incredibly damning allegation. The only reason to collect and destroy all copies of this memo would be in order to preserve, for as many Bush administration officials as possible, a potential defense against later prosecution. If the extent of these activities ever became public and investigations were commenced, the White House wanted to be able to argue that everyone involved relied in good faith on the advice of counsel. That defense would be severely undermined if it could be shown that these officials were warned, by a lawyer of Zelikow's caliber and rank within the administration, that the legal arguments they were relying on were poorly reasoned and unlikely to be sustained by a court.

This was pure CYA. And it was being done for reasons beyond the potential for political fallout. It was done in order to preserve the illusion of good faith reliance on OLC advice in the event of future criminal prosecutions. This is yet another reason why a special prosecutor needs to be appointed. While

I agree with the decision by Eric Holder not to pursue prosecutions against CIA officials who relied in good faith on OLC advice (and did not exceed the scope of that advice), it is becoming increasingly clear that there were people (likely high ranking intelligence officials and people in the White House) who were explicitly warned (likely repeatedly) of the shoddy and highly dubious nature of the OLC's advice. These folks should not be entitled to any presumption of good faith reliance. They need to be investigated. The attempt to scrub Zelikow's memo from the record looks to me like an act of criminal conspiracy intended to preserve plausible deniability about the illegal nature of various government activities.

UPDATE: The expunging of Zelikow's memo from the record is not the only thing the Bush administration has done to hinder the possibility of prosecution. Remember that all the tapes of these interrogations were **destroyed or went missing** at around the same time. I doubt that's a coincidence.

Zelikow doesn't make AL's point as explicitly as AL does: he says only that they'll have to explain why they destroyed those memos and doesn't think about the maintenance of plausible deniability for the torturers. But it's a good question.

So who's going to ask that question?