

# THE OPR REPORT: WHY NO SANCTIONS FOR BRADBURY?

The WaPo has a helpful preview of what to expect from the Office of Professional Responsibility's upcoming report on the authors of the torture memos. It talks a lot about the recommendation for professional sanctions for John Yoo and Jay Bybee.

A draft report of more than 200 pages, prepared in January before Bush's departure, recommends disciplinary action, rather than criminal prosecution, by state bar associations against Yoo and Bybee, former attorneys in the department's Office of Legal Counsel, for their work in preparing and signing the interrogation memos. State bar associations have the power to suspend a lawyer's license to practice or impose other penalties.

But curiously (or rather, suspiciously), the report does not recommend sanctions against Bradbury.

The legal analysis on interrogation prepared by a third former chief of the Office of Legal Counsel, Steven G. Bradbury, also was a subject of the ethics probe. But in an early draft, investigators did not make disciplinary recommendations about Bradbury.

Remember, the OLC got to review an early draft of this report—an OLC then headed by Steven Bradbury. I'm not a lawyer, so I'll leave it to those who are to convince me that Bradbury's opinions weren't every bit as crappy as Yoo's. But I do find his wholesale dismissal of the 8th Amendment rather troubling.

The WaPo also has this fascinating passage:

In a separate effort to counterbalance the draft report, Attorney General Michael B. Mukasey and Deputy Attorney General Mark R. Filip wrote a 14-page letter before they left office this year. They described the context surrounding the origins of the memos, written at a time when officials feared another terrorist strike on American soil.

Both Mukasey and Filip were dissatisfied with the quality of the legal analysis in the wide-ranging draft report, sources said. Among other things, the draft report cited passages from a 2004 CIA inspector general's investigation and cast doubt on the effectiveness of the questioning techniques, which sources characterized as far afield from the narrow legal questions surrounding the lawyers' activities. The letter from Mukasey and Filip has not been publicly released, but it may emerge when the investigative report is issued.

So Mukasey and Filip are going to try to rebut this report. Mukasey, of course, repeatedly pointed to the OLC memos to explain his refusal to prosecute torturers—so he's got to pretend they're respectable. I love the way the WaPo says Mukasey and Filip's report "may emerge" after the OPR releases its report. Just so you know, when the WaPo publishes their report in a month or so, it's not because Mukasey gave it to them, it's because it magically "emerged."

And, finally, the CIA IG Report again—funny how that's still causing the Bush Administration headaches, huh? Again, if the report discusses the CIA IG Report, then I don't know why Bradbury gets off without sanctions, as the report, which was written in 2004, only influenced Bradbury's memos, not the Bybee/Yoo work. If the OPR report is emphasizing the CIA

IG Report that torture doesn't work, then Bradbury's specious attempts to claim it was effective ought to be a real legal problem.

Ultimately, though, Bradbury may not be sanctioned for a totally different reason. The WaPo repeats reports elsewhere that emails formed a key role in the investigation. And we know that by 2005, the Bush Administration was much better at disappearing its emails than in the early days of the Administration.