

# FITZGERALD SUBPOENAS AND SERVER CRASHES

CREW reports something that I demonstrated clearly some time ago: materials subpoenaed by Patrick Fitzgerald in his CIA Leak Investigation were lost in the White House's seemingly intractable problems with email. (h/t Laura Rozen) But CREW's got new documents proving the case, including this Microsoft Post-Mortem documenting its efforts to conduct an email search in February 2004, in what is almost certainly the series of subpoenas Fitz issued shortly after taking over the investigation (the date referred to in the post-mortem—January 22—is the date Fitz issued his subpoenas). Here's a summary of the key subpoenaed material:

February 6 was Abu Gonzales' deadline to turn third batch of documents over to DOJ, including "records on administration contacts with more than two dozen journalists and news media outlets." The journalists, with my best take of what the investigators were looking for in brackets, include:

Robert Novak, "Crossfire,"  
"Capital Gang" and the Chicago  
Sun-Times [duh!]  
Knut Royce and Timothy M.  
Phelps, Newsday [source for  
their confirmation of Plame's  
status]  
Walter Pincus [Libby  
conversation, July 12 Plame  
conversation], Richard Leiby  
[background for profile], Mike  
Allen [identity of SA0], Dana  
Priest [identity of SA0] and  
Glenn Kessler [conversation with  
Libby], The Washington Post  
Matthew Cooper [duh!], John  
Dickerson [possible additional

source, Ari's "walk-up" conversation], Massimo Calabresi [possible additional source, Wilson interview], Michael Duffy [earlier article] and James Carney [earlier article], Time magazine

Evan Thomas, Newsweek [**why Evan Thomas? was he the "they're coming after you" journalist?**]

Andrea Mitchell [see Tom Maguire], "Meet the Press," NBC

Chris Matthews ["your wife is fair game"], "Hardball," MSNBC

Tim Russert [Libby complaint], Campbell Brown [**why Campbell Brown?**], NBC

Nicholas D. Kristof [Wilson column], David E. Sanger [January 24 document leak] and Judith Miller [duh!], The New York Times

Greg Hitt and Paul Gigot [July 17 NIE leak], The Wall Street Journal

John Solomon, The Associated Press [**why John Solomon?**]

Jeff Gannon [I knew Plame's identity from slumber parties at the White House], Talon News

Note two journalists who don't appear on this list: Clifford May, who in Fall 2003 claimed to have known of Plame's identity, and David Cloud, who in October 2003 published an article that appeared to be based on a leak of the INR memo. While I presume Cloud may not have been included because his article was outside the scope of the investigation, I assume May was excluded because the FBI determined in Fall 2003 that he was full of shit.

On March 5, a month past its deadline, the White House agreed to turn over

documents subpoenaed on January 22 and due on February 6. Scotty spun the delay thusly:

Q Can you also confirm that Air Force One documents – been handed over to a federal grand jury?

MR. McCLELLAN: Well, I would just say that we are, at the direction of the President, cooperating fully with those who are leading the investigation. We are complying with every request, and we will continue to comply fully with the requests from those who are leading this investigation. No one wants to the bottom of it more than the President of the United States.

Q So they were handed over?

MR. McCLELLAN: Well, we did send – the White House Counsel's Office did send a letter out to White House staff, urging everybody to comply fully with the request from the investigators, and that's exactly what we are doing. But, yes, at this point we're still in the process of complying fully with those requests. We have provided the Department of Justice investigators with much of the information and we're continuing to provide them with additional information and comply fully with the request for information.

A curious notion of cooperation the WH has there. I guess it isn't a deadline if the President misses it?

Remarkably (well, not really), the day before this subpoena was due, the White House's email server crashed:

On 2/5/04, the EOPRM server's drives crashed and caused the server to bluescreen at bootup.

Microsoft concluded its investigation of the crash with this wisdom.

There was an Exchange database backup but it was two weeks old. If we were unable to access the databases on the bad drives, two weeks worth of query results could have been lost.

Though I'm not sure whether that means two weeks were lost, or could have been.

We know a bunch of the emails in response were printed out by OVP RM on February 11.

**February 11, 2004:** Date on which June 11, 2003 Martin to Mayfield email printed out. The email was apparently discovered in a search of OVP files by "OVP RM." It mentions "Pincus" and "Niger."

**February 11, 2004:** Date on which July 11, 2003 Martin and Cooper email exchange printed out. The email was apparently discovered in search of OVP files by "OVP RM." It mentions "Cooper" and "Niger." Cooper's initial email was printed out, probably on July 11 or 12, though it has no date; Libby wrote notes on it on how he would respond to Cooper.

And many of the days leading up to Microsoft's efforts to fix the problem were still missing emails in 2005.

**January 29, 2004:** No email archive of OVP or WH emails.

**January 30, 2004:** No email archive of

OVP emails.

**January 31, 2004:** No email archive of OVP emails.

**February 1, 2004:** No email archive of WH emails.

**February 2, 2004:** Addington drafts a letter to Keith Roberts, Acting General Counsel, Office of Administration, listing the new terms for a search of the **OVP domain**. If "Joe Wilson" or "Niger" were mentioned in the October 1 gaggle, the October 1 Martin to Mayfield email should have been found in this search. No email archive of WH emails.

**February 3, 2004:** No email archive of WH emails.

**February 7, 2004:** No email archive of OVP or WH emails.

**February 8, 2004:** No email archive of OVP or WH emails.

What a bunch of coinkydinks, huh?

There are more documents relating to OVP that I'm sure will keep me, William Ockham, and MadDog busy all day.

The Office of the Vice President (OVP) had particular problems with missing emails. Several of the documents discuss copying and conducting a manual review of more than 200 PST files from OVP. OAP00000377, OAP00000741, OAP00000790, OAP00001411, OAP00001415. This review may have led to the creation of a spreadsheet compiling information about the OVP PST files, which showed gaps in the dates of preserved messages preserved. OAP00000778. One of those gaps was from at least October 1-3, 2003, a period for which Special Counsel Patrick Fitzgerald sought email during his investigation of the leaks that led

the disclosure of Valerie Plame's  
identity. OAP00000377.