

WHAT HAPPENED TO THAT OTHER OPR REPORT?

Remember the OPR Report? No, not the OPR Report on John Yoo's laughably bad torture memos. I'm talking about the OPR Report on John Yoo's even worse memo(s) authorizing domestic surveillance. The Torture OPR Report notes that it was the domestic surveillance memo, and not the torture memos, that first clued Jack Goldsmith into how dangerous John Yoo was.

Because of the problems with Yoo's NSA opinions, Goldsmith asked Philbin, who was familiar with Yoo's work at OLC, to bring him copies of any other opinions that might be problematic.

And it was OPR's investigation into the domestic surveillance memo—not the investigation into torture memos (as far as we know)—that George Bush tried to spike by refusing investigators the clearance to conduct the investigation.

Last we've heard official mention of this OPR investigation was last July, in the combined IG Report on warrantless wiretapping. At that point, we know, the investigation was not yet complete.

Title III of the FISA Amendments Act required that the report of any investigation of matters relating to the PSP conducted by the DOJ Office of Professional Responsibility (OPR) be provided to the DOJ Inspector General, and that the findings and conclusions of such investigation be included in the DOJ OIG review. OPR has initiated a review of whether any standards of professional conduct were violated in the preparation of the first series of legal memoranda supporting the PSP. OPR has not completed its review.

Since then we've heard nothing.

It turns out, I asked DOJ a week and a half ago about the report and got a "Oh, let me do research." I did a follow-up last week (as it happens, on Friday, the day Dawn Johnsen withdrew her nomination) and got a very different response: "We don't comment on OPR investigations." Now, perhaps that's just a prudent response after all the accusations Yoo and Bybee made that OPR was leaking information on the Torture memo investigation.

Still.

I find the secrecy around the domestic surveillance OPR Report all the more interesting given that DOJ still hasn't decided what to do about the 2006 White Paper used to justify warrantless wiretapping after Jim Comey and Jack Goldsmith realized the inherent powers argument failed. Mind you, David Barron's OLC passed what appears—from Glenn Fine's description—just as troubling as those two earlier memos back on January 8, 2010. So maybe it doesn't matter. Maybe we're doomed to have OLC recklessly authorize illegal wiretapping of Americans in the dark of night, no matter who's in charge there.

Nevertheless, it does seem worthwhile to remember that John Yoo was investigated not just for his egregious torture memos, but also for saying the President didn't have to follow the law—even the laws saying that Presidents can't wiretap Americans.