

RONALD ROTUNDA: YOO SENT EMAIL TO SOMEONE ELSE

Ronald Rotunda, having received a copy of [my post](#) suggesting that he was the professor whom Yoo emailed looking for help on common law defenses, has emailed to say he did not correspond with Yoo at all on these issues.

As you'll recall, last month, I [pointed to a section](#) of the [report](#) describing Yoo asking a law professor how common law defenses work in criminal law (the correspondent is labeled a law professor in one of the drafts of the report). Based on the fact that only one law professor, Ronald Rotunda, was listed in the Glossary of Names included with the report and only one law professor appears in the unclassified sections of the report, I suggested that Rotunda appeared to be the person whom Yoo emailed. In addition, OPR sent Rotunda a draft of the report last March which, given the confidential nature of the investigation, seemed odd short of his involvement in the report itself.

But via email, Rotunda has said he was not the one to whom Yoo sent that email. With Rotunda's permission, I've included his direct comments below (though I have grouped them so that his responses to my questions are together).

At first, it seemed that Rotunda was denying having corresponded with Yoo directly about torture.

I do know that no one ever sent me emails or other communications about the torture memos, and – if they had – I would have said what I have always said: our government should not use waterboarding. While I do not believe in discipline for the lawyers involved (for reasons I stated in my letter), I also do not embrace those memos.

When I noted that the email in question was not about torture memos but would have appeared, instead, to be a professional request unrelated to such issues (I quoted Yoo's email as described in the OPR Report), Rotunda repeated that he had not received the email.

I never saw that email or responded to it until you all brought it up a few days ago. I hope that is clear.

[snip]

And, to be clear, I never responded to Yoo's email because I never received it. He sent it someone else.

I apologize to Rotunda, then, for suggesting he was the one with whom Yoo had that email exchange. I will note Rotunda's comments in the original post.

Rotunda's explanation that he was not Yoo's email correspondent presents another few puzzles, such as why OPR sent Rotunda a draft of the report in the first place, way back in March 2009.

I had a copy of the draft OPR report because the OPR sent it to me so that I could give OPR my opinion. After I sent my letter, OPR asked me to destroy the draft OPR report.

When I asked why DOJ would have chosen to send him the report for his opinion, Rotunda suggested that that might be because he has done work for DOJ in the past.

Over the years (actually, decades now), the Department of Justice has retained me on various matters. I don't think I have written anything that was sent to OPR until this time. OPR sent me the material so that I could review the draft. That I know.

[snip]

As for what I've done in the past, that would be confidential. What has been publicly revealed (so there is no confidentiality requirement) is that many years ago I served as an expert witness for the Department of Justice in a fraud case. I really don't remember the details, but it was at least twenty years ago. (Sadly, that proves I'm no spring chicken.)

It also raises the question of why Rotunda's name was listed in the Glossary of Names included as Appendix C of the report.

I suppose my name was listed in the Glossary because I wrote the letter. You probably should ask OPR why my name was listed. I don't know.

[snip]

What I don't know is why I'm in the Glossary. OPR should know that.

I have asked DOJ for more explanation of why OPR sent Rotunda a copy of the report last March and will let you know what they say.

Meanwhile, that leaves the question of who Yoo consulted to come up with his crappy defenses section unanswered.