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# Justice Dept. Reveals More Missing E-Mail Files

By **ERIC LICHTBLAU**

WASHINGTON — Large batches of e-mail records from the Justice Department lawyers who worked on the 2002 legal opinions justifying the Bush administration's brutal interrogation techniques are missing, and the Justice Department told lawmakers Friday that it would try to trace the disappearance.

At a Senate Judiciary Committee hearing, Senator **Patrick J. Leahy**, the Vermont Democrat who leads the panel, angrily demanded to know what had happened to the e-mail files, and he noted that the destruction of government records, including official e-mail messages, was a criminal offense. He said the records gap called into question the completeness of the department's internal reviews of the work done by the lawyers in the Bush years.

The Justice Department's Office of Professional Responsibility, which spent more than four years investigating the handling of the legal opinions about interrogation policies after the Sept. 11 attacks, pushed to get access to a range of e-mail records and other internal documents from the Justice Department to aid in its investigation.

But it discovered that many e-mail messages to and from **John C. Yoo**, who wrote the bulk of the legal opinions for the Justice Department's Office of Legal Counsel, were missing. The office disclosed the missing messages in a footnote to its final report, which was released last week.

"We were told that most of Yoo's e-mail records had been deleted and were not recoverable," officials from the Office of Professional Responsibility said in the footnote.

Also deleted were a month's worth of e-mail files from the summer of 2002 for Patrick Philbin, another Justice Department lawyer who worked on the interrogation opinions. Those missing e-mail messages came during a period when two of the critical interrogation memos were being prepared.

Mr. Yoo's lawyer, [Miguel Estrada](#), said Mr. Yoo had left the Justice Department by the time the Office of Professional Responsibility had begun its review and "has no basis for knowing whether e-mails are gone or why." In pursuing the matter, Mr. Leahy is "simply chasing his tail and feeding far-left conspiracy theories," Mr. Estrada said.

Mr. Philbin did not respond to requests for comment Friday.

Mr. Leahy said the disappearance of the e-mail messages raised "serious concerns about government transparency and whether the Office of Professional Responsibility had access to all the information relevant to the inquiries."

The original interrogation memos "were intended to provide a golden shield to commit torture and get away with it," Mr. Leahy argued, but he said questions about how the memos were developed and what role the White House played may go unanswered.

Mr. Leahy also noted that 22 million missing e-mail messages from the Bush White House were recovered just two months ago, including batches of communications that had been sought by the judiciary committee as part of its oversight work into the 2007 firings of [United States attorneys](#) and other matters.

Gary Grindler, the acting deputy attorney general who represented the Justice Department at Friday's hearing, said he did not think there was "anything nefarious" about the deletion of the e-mail messages, but he could not explain what happened to them.

He said he had directed administrative personnel at the Justice Department to review the situation and determine whether there were problems in the department's system for automatically archiving internal documents. He said the review would also seek to recover the missing e-mail messages if possible.

In its final report, the Office for Professional Responsibility concluded that Mr. Yoo and his former boss, [Jay S. Bybee](#), demonstrated professional misconduct in preparing the legal opinions that justified [waterboarding](#) and other interrogation tactics on [Al Qaeda](#) suspects in American custody.

The office's findings were overruled, however, in another report released the same day by David Margolis, the associate deputy attorney general, who said Mr. Yoo and Mr. Bybee demonstrated flawed reasoning but not misconduct. Mr. Margolis rejected the Office of Professional Responsibility's attempt to refer Mr. Yoo, now a law professor at Berkeley, and Mr. Bybee, a federal appellate judge, to state bar officials for possible disciplinary action.

Republicans on the Judiciary Committee appeared unconcerned about the missing e-mail

messages and said that if the Justice Department were to continue investigating anything involving the interrogation memos, it should be whether officials at the Office of Professional Responsibility or elsewhere at the Justice Department improperly leaked details of the ethics inquiry to the news media over the last year.

Senator Jon Cornyn, Republican of Texas, said Mr. Yoo and Mr. Bybee deserved “the thanks of a grateful nation for their service,” not accusations, and that the leaks had done “irreparable damage” to their reputations.

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