

SENATE DEMS CORNER BUSH AND GONZALES ON THEIR ATTEMPT TO GAME APPOINTMENTS

Oh, this is getting fun.

Remember how I pointed out that Steven Bradbury, the guy who wrote the opinion declaring Harriet immune from having to appear before Congress, was not acting with proper authority?

Well, Leahy, Durbin, Feingold, and Kennedy have raised the stakes on that issue.

We write seeking information about a memorandum issued on July 10, 2007, by the Justice Department's Office of Legal Counsel (OLC), concluding that former White House Counsel Harriet Miers should be absolutely immunized from responding to a subpoena to appear and testify before Congress. The White House and Ms. Miers are relying on this opinion as the basis for Ms. Miers' refusal to appear yesterday before the House Judiciary Committee.

There is a serious question about whether this OLC opinion was properly issued. Under applicable law and regulations, the Attorney General has delegated to the Assistant Attorney General of OLC the authority to render opinions and legal advice to the various agencies of the government. The Assistant Attorney General may delegate this authority, but he or she must supervise the delegated work. When there is no Assistant Attorney General, confirmed or acting, the Attorney General must supervise the delegated work. Since you have recused yourself from matters relating to the U.S. Attorney's scandal, it is unclear under

whose supervision the July 10th OLC opinion was issued.

The letter goes on to describe why Bradbury cannot be the acting AAG, explaining what I reported yesterday about the Vacancies Act violation, and therefore had no authority to write the letter.

This move is so priceless on a number of levels. The letter goes on to place this against the background of Bush's attempts to game the appointments process with the original PATRIOT provision. The suggestion is that this is another attempt to do so (one that parallels his apparent attempt to stretch out the tenure of the USAs currently serving under the PATRIOT provision). It also emphasizes that Bradbury was never approved as AAG (by a Republican Senate) because of his implication in the NSA scandal. And then reminds Gonzales that the problem is that Bush refused to allow OPR to investigate whether the OLC acted improperly under Bradbury. This letter has it all: USA Purge, NSA Scandal, and abuse of Executive Privilege, all rolled up into one.

And if the letter was written without the proper authority? Well, then, Harriet is in contempt by anyone's measure, not just John Conyers'.