

WHY BUSH IS SO DESPERATE TO GET BRADBURY APPROVED

There has actually been pretty good coverage—even in the traditional press—of Bush's intransigence over the Bradbury nomination. Here's the AP, for example.

The nomination of Steven Bradbury for assistant attorney general is especially controversial.

In January, Bush renominated Bradbury, refusing to yield to Democrats who oppose a permanent job for the official who signed legal memos authorizing harsh interrogations for suspected terrorists. Bradbury has been serving as acting chief of the Justice Department's Office of Legislative Counsel. Bush wants the Senate to confirm Bradbury as permanent head of the office.

Senate Democrats complain that two secret memos from Bradbury in 2005 authorized the CIA to use head slaps, freezing temperatures and waterboarding — a practice that invokes drowning fears — when questioning terrorism detainees.

And even better is this article from the LAT:

Perhaps the most contentious nomination is that of Steven G. Bradbury as an assistant attorney general in charge of the Office of Legal Counsel, which advises the administration on major legal questions.

His nomination has been pending for two years. Democrats have balked at approving him, citing the legal justification that he provided to administration officials who defended the National Security Agency's use of

warrantless electronic surveillance after the Sept. 11 attacks.

Objecting to Bush's repeated insistence on placing Bradbury in the sensitive position, the Senate has refused to act on dozens of other nominations, including that of U.S. District Judge Mark Filip of Chicago as deputy attorney general, the Justice Department's No. 2 post.

And the Politico:

While there are scores of pending appointments, much of the acrimony can be traced back to Steven Bradbury, nominated to the post of assistant attorney general, office of legal counsel.

Despite the banal title, the office issues legal opinions which are binding on the executive branch. While serving in the position as acting assistant attorney general, Bradbury signed memorandums authorizing the use of harsh CIA interrogation techniques, which Democrats have characterized as torture.

In December, Reid offered to confirm 84 stalled administration nominees in exchange for the withdrawal of Bradbury's nomination, but the White House declined, according to Reid.

In spite of Bush's little breakfast theater yesterday, everyone seems to get that this argument is about Steven Bradbury, and only secondarily about Bush's neanderthal choices for a number of his other nominations.

But no one seems to get the reason why Bush has forced this stand-off with the Senate. As I pointed out several weeks ago, the re-appointment of Bradbury—whether or not he is confirmed—serves as a control on Mukasey from

now until the end of Bush's Administration.

...the re-appointment guarantees that Bradbury can continue to act as OLC head through the end of Bush's term. It ensures that Dick and Addington have their stool (in both senses of the word, I suspect) in the heart of DOJ, preventing any real roll-back of Dick's Constitutional atrocities.

No matter what Mukasey's intentions, it seems, Bush and Dick now have their insurance that Mukasey can only do so much to fix this Administration's shredding of the Constitution.

More importantly, as yesterday's HJC hearing proves, having Bradbury in OLC authorizing whatever atrocities BushCo dream up gives them immunity from federal prosecution for those atrocities; Attorney General Mukasey has made it clear that he will not investigate or prosecute anything that has OLC sanction. (And read Marty Lederman for why Mukasey's stance, though logically atrocious, is legally justifiable.) The very best we can wish for, from Mukasey, is that he won't sign off on any more Pixie Dust and Waterboarding opinions (though that assumes that Addington and Bradbury will show him the opinions, which may not be a safe assumption).

George Bush would forgo all his other 84 appointments because he wants to remain safe from prosecution and probably would like the insurance of immunity for any of his actions going forward. Democrats need to make this clear—Bradbury is about more than a personnel dispute, it's about whether the President is above the law.