

AND NOW THE APPEALS COURT JUMPS IN THE FRAY

This is weird. The DC Appeals Court apparently doesn't want to give Obama time to make a deal between Bush's minions and the House Judiciary Committee.

After specifically invoking the benefit of "permitting the new President"... "to express [his] views on the merits of the lawsuit" between the House Judiciary Committee and Harriet Miers and John Bolton last fall when it stayed Judge Bates' ruling knocking down Absolute Immunity, and in spite of the fact that said new President asked for two additional weeks to submit his brief on the debate over Harriet Miers' testimony, and in spite of the fact that HJC agreed to that two week delay, the DC Appeals panel has ordered DOJ to submit its brief by February 25, half the time the Obama Administration requested.

That's weird for several reasons. Normally, when the legislature and the executive get into a squabble, the courts like to have them try to resolve the squabble on their own. One of the reasons Obama had wanted two weeks was to try to broker a deal himself. Given reports that such a deal is taking some time, the order to submit briefs this Wednesday makes it much less likely that HJC and Bush's minions will make a deal before the Appeals Court gets involved again.

The one-week extension also guarantees that Obama will submit his brief before Dawn Johnsen takes over at OLC; her confirmation hearing is scheduled for the same day as the new deadline for the brief. One way Obama could have responded to this suit would be to simply withdraw Steven Bradbury's audacious memo expanding Absolute Immunity, but that won't happen before Johnsen takes over.

Now, I have no idea why the Appeals Court is so

antsy to get involved here, but there are several possibilities.

It's possible that they've seen Greg Craig's statement explaining that Obama will not "do anything that would undermine or weaken the institution of the presidency" and they worry that Obama will craft a deal that preserves Absolute Immunity, and they want to prevent that from happening (though why they think John Conyers would agree to such a deal, I have no clue).

It's possible they've read Obama's Executive Order on Presidential Records—asserting that incumbent Presidents get to decide the Executive Privilege claims of their predecessor—and they believe that that claim puts Bush and his minions in too weak a position, so they've decided to press the issue in order to give Bush's minions a stronger bargaining position.

Or it's possible that the squabble between two administrations of the executive branch and the legislative branch just looked like so much fun that the Courts wanted to get involved.

In any case, with the Obama Administration brief due on Wednesday, we'll have a better sense than of what Greg Craig's statement on Presidential power really means.