

United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

October 16, 2007

President George W. Bush
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear Mr. President:

We urge you to withdraw the nomination of Steven Bradbury to be Assistant Attorney General for the Department of Justice's Office of Legal Counsel (OLC) and to submit promptly another nominee for this important position. Recent reports regarding Mr. Bradbury's involvement in approving the legality of abusive interrogation techniques provide further evidence of his unsuitability to head the Office of Legal Counsel.

According to an October 4th article in *The New York Times*, in 2005 Mr. Bradbury signed two OLC legal opinions approving the legality of abusive interrogation techniques. According to *The Times*, then Attorney General Alberto Gonzales approved one such opinion over the objections of then Deputy Attorney General Comey, who said the Justice Department would be "ashamed" if the memo became public. The reported timing of this secret opinion, which, according to *The Times* was issued early in 2005, is particularly disturbing since it followed on the heels of the Department's decision to withdraw the Bybee torture memorandum and replace it with a publicly-issued opinion on December 30, 2004.

Reportedly, Mr. Bradbury also signed another OLC opinion concluding that certain abusive interrogation techniques do not constitute cruel, inhuman or degrading treatment. This opinion was apparently designed to circumvent legislation, then being considered by Congress, to clarify that such treatment is absolutely prohibited.

The legal opinions reported in *The New York Times* would be only the latest in a series of incidents that demonstrate Mr. Bradbury is not an appropriate choice to head OLC. During the confirmation process, Mr. Bradbury has refused to answer straightforward questions from Judiciary Committee members regarding torture. In November 2005, Senator Durbin initially objected to Mr. Bradbury's nomination, stating:

Mr. Bradbury is currently the acting head of OLC. In this capacity, he approves Justice Department legal opinions. Since the Justice Department refuses to provide us with OLC opinions on interrogation techniques, we do not know enough about where Mr. Bradbury stands on the issue of torture. What we do know is troubling. Mr. Bradbury refuses to repudiate un-American and inhumane tactics such as waterboarding, mock execution, and physically beating detainees.

There also are serious unresolved questions about Mr. Bradbury's role in the NSA warrantless surveillance program. As you know, the Justice Department's Office of Professional Responsibility (OPR) last year opened an investigation into the conduct of Justice Department attorneys who authorized the NSA program. You personally denied security clearances to the OPR investigators, effectively blocking the investigation. Documents provided to the Senate Judiciary Committee suggest that OPR was investigating whether OLC engaged in misconduct while Mr. Bradbury was acting head of OLC.

In August 2006, we sent you the attached letter asking that you allow the OPR investigation to proceed and informing you that they would object to proceeding with Mr. Bradbury's nomination until OPR clears him of any wrongdoing. You have not yet responded to this letter.

We are also very concerned that Mr. Bradbury continues to serve as the unconfirmed but de facto head of OLC in apparent violation of the Vacancies Reform Act.

The concerns outlined above are particularly troubling because of the significant influence OLC wields, issuing legal opinions that are binding on the Executive Branch. We have only recently learned about the crucial role that Jack Goldsmith, Mr. Bradbury's predecessor at OLC, played in repudiating misguided OLC opinions regarding torture and warrantless surveillance that were issued earlier in your Administration. With Alberto Gonzales' resignation, there may be an opportunity to undo some of the damage wrought during his tenure. It is doubtful that progress will be possible without new leadership at OLC.

Accordingly, we again urge you to withdraw Steven Bradbury's nomination and to submit another nominee for Assistant Attorney General of OLC. We look forward to your response.

Sincerely,


Richard J. Durbin


Edward M. Kennedy


Russell D. Feingold

Attachment