

THE “PDAG” WHO APPROVED HARRIET’S IMMUNITY HAD NO AUTHORITY TO DO SO

There are two big tidbits in the questions Leahy sent to AGAG to "pre-refresh" his memory before he testifies next week. The first is a question that seems to suggest that the "Principal Deputy Assistant Attorney General," Steven Bradbury, who wrote the opinion judging Harriet immune from compelled Congressional testimony was acting as Acting AAG of the Office of Legal Counsel, in spite of the fact that his nomination to be the AAG was already rejected by the Senate.

This Committee recently became aware of a memorandum dated July 10, 2007, and signed by Steven G. Bradbury as “Principal Deputy Assistant Attorney General” for the Office of Legal Counsel. It contends that Harriet Miers, who is a former White House Counsel, is “immune from compelled congressional testimony.” Pursuant to what legal authority did Mr. Bradbury issue this memorandum, and how is Mr. Bradbury’s issuance of this memorandum consistent with the Vacancies Act? At the end of the last Congress, Mr. Bradbury’s nomination to serve as the Assistant Attorney General for the Office of Legal Counsel was returned to the President.

I’m not sure I completely understand this one, because Bradbury was, apparently, PDAAG when he was appointed to be AAG in 2005; I assume that means he would remain PDAAG, even though he failed to become AAG. But I’m guessing the sticking point is that Bradbury is effectively **serving** as AAG after his nomination was

rejected. Leahy seems to be busting DOJ for keeping Bradbury in a functional role that the Senate has already rejected him for. If I'm reading technical jargon correctly, Bradbury can only serve as Acting AAG 210 days, which has long expired.

Note that Bradbury's been busy in other places, such as when he testified before HJC's Constitution Subcommittee on domestic wiretapping.

Update: Ding ding ding ding! Here's the relevant legal restriction:

Q22. Does the Vacancies Reform Act impose the same time limits on officers who continue to serve once their terms have expired as apply under the Act to the categories of acting officers?

A. No, the Act sets out an additional limitation on how long such an officer may continue to serve. In addition to being subject to the general time limits of the Vacancies Reform Act, the Act also provides that the carry-over officer **may no longer continue to serve on a temporary basis once the officer's nomination is either confirmed or rejected by the Senate.** [my emphasis]

Update, Correction: I've checked with a committee staffer, and the issue is not rejection of a nomination (Bradbury's nomination was returned, as happens at the end of a Congress, not rejected). The issue is timing. He has served longer than the 210 day limit, so can no longer serve as Acting AAG.