

MIERS AND BOLTEN CAN KICKED DOWN THE ROAD

✖ The opinion by the DC Circuit Court of Appeals in the Harriet Miers and Josh Bolten subpoena matter has just been issued. The court has granted the stay requested by the Bush Administration; which, by all appearances, will effectively end the litigation as the subpoenas presumptively expire on January 3, 2009 when the term of the current 110th Congress expires. The opinion is short, easily understandable and should be read by one and all to get a first hand look at truly mendacious appellate judicial practice.

The present dispute is of potentially great significance for the balance of power between the Legislative and Executive Branches. But the Committee recognizes that, even if expedited, this controversy will not be fully and finally resolved by the Judicial Branch—including resolution by a panel and possible rehearing by this court en banc and by the Supreme Court—before the 110th Congress ends on January 3, 2009. At that time, the 110th House of Representatives will cease to exist as a legal entity, and the subpoenas it has issued will expire.

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In view of the above considerations, we see no reason to set the appeal on an expedited briefing and oral argument schedule. If the case becomes moot, we would be wasting the time of the court and the parties.

Last I heard consummate can down the road kicking was not an affirmative duty in the judicial canons. This is buggered up. Basically

the Court has said "We're going to presume there would be further appeal, which we are going to presume will take us past the moot date of Congress turn over – and VIOLA – it is already therefore effectively moot. Buh bye, gotta go lunch and martini now!"

Lest you think I am kidding about the pernicious nature of this decision, get a load of the specially concurring, and kind of dissenting, Judge Tatel:

Nevertheless, I am perplexed by the panel majority's willingness to grant a stay while hypothesizing that the expiration of the 110th Congress might moot the case before it is heard on the merits. Never have we granted a stay that would have the effect of irrevocably depriving a party of its victory in the district court. Nor have we authority to do so, for a stay in such circumstances would necessarily cause "substantial" – indeed, overwhelming – harm.

Man; no kidding. That is kind of an understatement there Judge.

As much of a disgrace as this opinion is, the real fault lies with Nancy Pelosi, Steny Hoyer and the Democratic Leadersheep as they intentionally strung out the filing of this litigation to an extent that compels the conclusion this is the precise result they desired.

The Democratic Leadership screwed off all kinds of time in addressing the issue, and, when they finally did, they completely rejected common sense, and even Judge Bates' advice that they needed to man up and exercise their Constitutional prerogatives. By that, of course, he was referring to the exercise of their inherent contempt power.

Par for their course, Pelosi, Hoyer et al. did

not even discuss protecting and defending the Constitution and the Congressional prerogative inherent under the Separation of Powers. These "leaders" are so derelict in their duty as to be treasonous.