

DAWN JOHNSEN: FINISH THE JOB OF FIXING OFFICE OF LEGAL COUNSEL

Dawn Johnsen has a must-read op-ed today describing how the Bybee memo damaged the Office of Legal Counsel.

In 2004, the leak of a controversial memo on the use of torture catapulted the Justice Department's Office of Legal Counsel into the spotlight. Fallout and debate continue, including in the context of my nomination – withdrawn this spring – to head this office. While attention understandably is focused on confirming the president's Supreme Court nominee, the OLC remains, after six years, without a confirmed leader.

It is long past time to halt the damage caused by the "torture memo" by settling on a bipartisan understanding of the proper role of this critical office and confirming an assistant attorney general committed to that understanding.

There is no simple answer to why my nomination failed. But I have no doubt that the OLC torture memo – and my profoundly negative reaction to it – was a critical factor behind the substantial Republican opposition that sustained a filibuster threat. Paradoxically, prominent Republicans earlier had offered criticisms strikingly similar to my own. A bipartisan acceptance of those criticisms is key to moving forward. The Senate should not confirm anyone who defends that memo as acceptable legal advice.

While I agree with everything Johnsen says (go

figure), I'm wondering, why now? Is she worried that Obama's preparing to nominate someone who **does** think the Bybee memo is reasonable? There's also this bit, at the end, which suggests she's pushing for more transparency in OLC than there is now.

The example of the torture memo argues heavily for greater transparency so that lawmakers and the American people may better understand and respond to the actions of their government. Of course, public explanations must safeguard national security, including sources and methods. But the memo's conclusion that the president's constitutional authorities entitled him to override the federal torture law is a clear example of legal analysis the government should make public. That's how democracies work.

[snip]

The OLC can be the last word on legal issues that may never get to court. In such cases, public scrutiny and debate provide the most effective check against unduly expansive theories of presidential power. The stability of the rule of law must not depend on leaks.

Granted, the torture memo did come out via a leak, so her comment is not totally out of context. But we have had a recent leak about OLC's involvement in efforts to make our stance on Gitmo trials coincide with our stance on drones.

Is there something specific Johnsen is responding to?