

SPARKY TAKES A DUMP, PRODUCES TURD NAMED MCCAIN AND OTHER NEWS AND NOTES FROM WINGNUT HELL IN ARIZONA

✘ Yes, that is Sparky the Sun Devil and the small turd next to him is John McCain (no, it is not a photoshop; is a real picture McCain himself put out on Twitter). As you may have heard, the Arizona primary was last Tuesday and McCain squeaked by the “serious challenge” of gasbag extraordinaire J.D. Hayworth. McCain beat Hayworth by 25 points. But for months, going back even well before Hayworth finally was forced to quit campaigning on his radio show and admit he was actually running, the national media clucking heads were yammering relentlessly about how McCain was “vulnerable” and “in the fight of his political life”. It was, as just about everything with McCain is, a complete gin job and fabrication by the national media.

Here is what I said in an email discussion with a number of colleagues back on February 24 after one of them started talking about McCain being in trouble:

I am telling you, I just do not, at least yet, see any giant tidal wave here for Hayworth. ... It may change, but so far in Arizona, the Hayworth bandwagon is far overrated by the national chattering classes.

....

Again, the problem is there is a very established Republican party and attendant power and money machine here and they do not like JD Hayworth for shit and never did; they did not give a

rat's ass about him losing to Harry Mitchell, in fact if they had, he would not have lost. Quite frankly, McCain is not their favorite either in some regards; but he sure is compared to Hayworth historically. Plus McCain has Grant Woods behind the scenes again, and he is very good and pretty ruthless. Hayworth's sound bites make for dandy fodder for FoxNews, MSNBC and, to a lesser extent CNN, but they do not mean diddly shit here. This is not a national election, it is an Arizona Republican primary.

I tried to correct the record with any number of places and people when I saw this meme, right up to the election; mostly to little avail. I am a native here and have been around a long time, there was just never a chance in hell that Hayworth could even get close to McCain; but you just could not stop the national political horserace chattering chowderheads like Chuck Todd, Chris Matthews, Chris Cillizza, the Politico boys etc. from perpetrating this pile of dung.

They were full of it as the vote total demonstrated. Now they have blithely moved on to compensating for their ignorance and/or incompetence by clucking about "yes, yes, McCain won big, but he had to sell out and be someone he wasn't to do it". See for instance USA Today, NPR, Reuters, and Dan Balz of the Washington Post.

It is all pure unadulterated rubbish. A con. McCain has always been a completely self serving grifter con who has never been dedicated to any principle or cause other than John McCain. McCain walked out on his first wife and family after returning from Vietnam, after she had waited for him the entire time and while she was crippled and laid up bedridden from a tragic car accident. Left her while they were still married and brought his flim flam carpetbag to Arizona because it provided what he thought was his best

shot of anywhere in the country to get a seat in Congress and because there was a very cute and very rich beer heiress here whose family could provide him with the juice and credibility to get elected.

That is the kind of man McCain is and what he stands for. Always has been, always will be. John McCain is a supremely narcissistic self serving belligerent lout that cares about one thing, and one thing only, and that is John McCain. So, when senile political nitwits like ~~Matlock~~ David Broder blather baloney like this:

But now, as the 73-year-old senator prepares for what may well be his final term in a congressional career that began in 1982, the time has come for McCain to look to his legacy – and conditions are right.

In a Congress in which Democrats have pitiful approval ratings and Republicans even worse, McCain is one of the few names that does not draw instant contempt from the voters. The reputation he established for independence – for being his own man, no matter what the pressures – has survived the vagaries of an exceptionally long career.

choke back the appropriate gag reflex to puke and remember just who and what John McCain really is, the belligerent narcissistic turd of a Devil. McCain didn't change to win this election, doing and saying whatever benefits John McCain at the moment has always been his calling card.

In other news and notes from the Arizona primary last Tuesday, it will be Jan Brewer versus current Attorney General and former Phoenix Mayor Terry Goddard in the general election for governor. It is kind of amusing watching the same chattering media class described above talk about Jan Brewer like she is some political force to be reckoned with. Brewer has been

around for decades, mostly as a harmless but batty state legislator. Locals called her "Kooky Jan" as far back as the 1980s because she was, well, kind of kooky.

Brewer's newfound notoriety and prominence is accidental, not the mark of political shrewdness. She was basically the puppet template that a local right wing political strongman operative by the name of Chuck Coughlin ran for Secretary of State and fell into the governorship when Janet Napolitano was named DHS Secretary. Brewer also stumbled into the SB 1070 Immigration law issue and she and Coughlin were smart enough to know it was her ticket to fend off Joe Arpaio's thoughts of primarying her and to get her name out as a power player who was capable of actually being reelected (which was not particularly the case before). Brewer is actually personally very nice and not particularly mean spirited, but she saw her ticket to staying in office and ran with it.

Terry Goddard is a good guy and a decent politician, but has little charisma and has been hanging around for so long that he just kind of has the patina of stale. Unless something changes, Kooky Jan is going to be comfortably reelected, which is more than a little mind blowing.

Another very important race is for Attorney General. The uber right wing political climber, and Joe Arpaio acolyte, Andrew Thomas thankfully was defeated in the primary. Unfortunately, the guy who squeaked out the win over Thomas by a few hundred votes, Tom Horne, is not all that much better. And Horne will have a solid advantage over the Democratic nominee Felicia Rotellini. This is a critical post because the Arizona AG decides how to handle the batshit crazy legislation that comes out of the Arizona state legislature. If you have any pull in Arizona, or friends there, give Rotellini some help.

Last, but not least, there is the matter of young Ben Quayle. Also known as Brock Landers.

Quayle is an aggressive and incredibly duplicitous punk who needs to be stopped. Quayle at first denied he was party boy Brock Landers, then admitted he had lied. Word on the street here is that a LOT more about Quayle/Landers' Caligula past will be forthcoming; it already is in multiple forums.

Doug Kahn and Howie Klein have been pounding on the absolutely horrid Blue Dog Gabby Giffords over at Down With Tyranny and supporting progressive Raul Grijalva from the shameless attacks by Giffords and the DNCC.

So that is an update on political life in wingnut hell, otherwise known as Arizona.

OBAMA'S RELENTLESS ABANDONMENT OF PROGRESSIVE NOMINEES

Barack Obama was never a hard liberal nor progressive, whatever the supposed difference between the two really is. Those blinded by hope and change who thought otherwise were imprinting their own desires and beliefs on what was a relatively blank slate, which was probably easy enough to do in the despair resultant from the eight years of George Bush. By the same token, however, Mr. Obama cultivated and encouraged such beliefs; this he worked hard at, and it was critical to him being elected president.

Now if you listened to, and read Obama, and paid attention, you knew he was a centrist who worked by increment, compromise and seeking consensus as opposed to a liberal beacon that would take the country in a new and markedly different direction. Again, that said, the liberals and progressives who served as the ground force,

heart and soul of Obama's candidacy and election had every right to believe he would at least include them at his table and utilize their talents in his Administration and appointments. There was an implicit deal made in this regard, and Obama purchased on it to his wild success. Now he has defaulted.

I first wrote significantly on the betrayal of the Obama White House toward liberal nominees in relation to the nomination of Dawn Johnsen to the critical post of head of the Department of Justice's Office of Legal Counsel. The scorn for, and abandonment of, the Johnsen nomination still stands out because of the fact it is clearly established that there were 60 votes cloture on a Senate floor vote for Johnsen's nomination. It wasn't that Johnsen could not be confirmed, she absolutely could have been and would have been; it was that Obama did not want her and would not call for a vote.

Johnsen was not only the best person for a critical job, she was a symbol to a critical part of Obama's and the Democratic constituency. It is far more than Dawn Johnsen however it is a pattern of abuse and scorn the Obama White House relentlessly exhibits to a major portion of the base. Currently the focus of progressives is on the potential nomination of Elizabeth Warren as head of the newly enacted Consumer Financial Protection Bureau. Despite some public platitudes, it is quite clear the Obama Administration does not want a competent crusader for citizens like Warren and, apparently, is working through the cut out of Chris Dodd to see Warren doesn't get the nod.

Maybe the pressure will get to the Obama White House and Warren will get the post she deserves and would be perfect for; but don't count on it because Obama, Geithner, Summers, Rahm and the boys on the Obama bus just do not want her. And they didn't want Christine Romer either, so they let the misogynistic, consistently wrong about everything he touches, Larry Summers push her out. It is becoming a broken record with this

White House.

Most distressing to me, because I practice law in the 9th Circuit, is the complete abandonment of two critical liberal judicial nominees, Goodwin Liu and Edward Chen; you may not be aware of because their nominations were tanked in the quiet of the night before those oh so hard working and diligent souls in the United States Senate jetted out of town for a 37 day vacation. Because Senate Rule XXXI specifies that all nominations not voted on and not held over by unanimous consent are extinguished and returned to the White House, the Liu and Chen nominations are toast.

Some of the still starry eyed Obama true believers who care about Liu and Chen (and both are incredibly excellent and worthy nominees) probably still think Obama will renominate them (and there is mention of that by, of course, an anonymous "White House official"). But even if he did, why in the world would anybody believe it to be anything other than a ruse to get their support leading up to the fall election? Obama renominated Dawn Johnsen and then hung her out to dry twisting in the wind until she finally ended the charade. It was a charade to sucker progressives, and there is no reason to believe he will not do it again. There is a track record with this White House, and it is not a good one; in fact, it is downright pathetic.

If you do not know about Goodwin Liu, you should. Liu is quite arguably the brightest and most accomplished young legal liberal star in the universe. He is the future of any liberal hope on the Supreme Court; like Antonin Scalia or John Roberts on the right, Liu is the future legal heavyweight for the liberal future. At only 39 years of age, Liu's resume and record of accomplishment, service and involvement in the law makes Elena Kagan look like a malnourished piker. He is worth fighting for tooth and nail (and so is Ed Chen for that matter). Except Barack Obama did not lift a finger; didn't ever expend any of his precious political capital in

furtherance of the nomination and didn't even utter a peep of protest as Harry Reid and the Senate let him die in the night as they were fleeing town. But that is the hallmark of the Obama Presidency in relation to liberals and/or progressives; they just don't give a damn and won't lift a finger (but they will expect the votes whenever elections come around).

The Obama White House also put up no fight for Peter Diamond, a worthy and critical nominee to the Federal Reserve Board. It is a pattern and practice with the Obama White House. If you are an only marginally qualified centrist Obama toady like Elena Kagan, they will fight like dogs for you; but if you are a strong progressive voice you are toast.

Maybe progressives ought to be considering someone like Elizabeth Warren for a *much* higher office than head of CFPB; or they can continue to be treated as "f**cking ret*rds" by the current denizens of the White House.

SHOCKING RESULT IN DANNEHY US ATTORNEY PURGEGATE SCANDAL!

As several folks have noticed in comments, the results are in from the ~~Nick and Nora Dannehy~~ DOJ investigation into the US Attorney firings by the Bush/Cheney Administration. And, shockingly, the Obama/Holder Department of Justice just cannot find any conduct, not one single instance, worthy of criminal prosecution.

From the official six page letter from DOJ Main's AAG, Ronald Welch, making the belated and pitiful report to Judiciary Chairman John Conyers,

█ This supplements our earlier response to

your letter of October 2, 2008, which requested information about the appointment of Assistant United States Attorney Nora R. Dannehy of the District of Connecticut to determine if criminal charges are warranted based on certain findings in the public report of the Office of the Inspector General (OIG) and the Office of Professional Responsibility (OPR) (collectively OIG/OPR) entitled "An Investigation into the Removal of Nine U.S. Attorneys in 2006" (Report). We are sending identical responses to the other Members who joined in your letter to us. As more fully explained below, Ms. Dannehy has determined that no criminal charges are warranted with respect to this matter.

....

In closing, it is important to emphasize that Attorney General Holder is committed to ensuring that partisan political considerations play no role in the law enforcement decisions of the Department. In this instance, Ms. Dannehy, a long time career prosecutor, was asked only to assess the possible criminality of the actions described in the OIG/OPR report, to conduct such additional investigation as necessary to make that assessment, and to determine whether anyone made prosecutable false statements to Congress or OIG/OPR. The Attorney General appreciates the work of Ms. Dannehy and her investigative team and has accepted her recommendation that criminal prosecution is not warranted.

The Attorney General remains deeply dismayed by the OIG/OPR findings related to politicization of the Department's actions, and has taken steps to ensure those mistakes will not be repeated. The Attorney General also appreciates the work of the Inspector General and the

Office of Professional Responsibility on this matter.

We hope that this information is helpful. Please do not hesitate to contact this office if we can provide additional assistance regarding this or any other matter.

The whole letter is here and speaks for itself if you care to read it.

This is entirely what anybody with a lick of sense should have expected from the forward looking *modus operandi* of the Obama Administration. The one note I would make is that Dannehy's "investigation" was never a full fledged inquiry into the entire matter; the focus was set at, and remained, on David Iglesias' complaint, which was not phrased all that compellingly by Iglesias to start with, and was further muddled by the antics of Scott Bloch. Little but lip service was given to the remainder of the sordid picture of Purgegate. You might remember Scott Bloch, the "professional" Iglesias was so sure would do the right thing and get to the bottom of the abuse engendered upon Iglesias.

In other news, the Obama/Holder DOJ recently announced they have no problem with Scott Bloch getting off with probation on his criminal plea of guilt.

The Obama White House loves tidy little packages, and they have clearly wrapped one up here. Any more questions about how the big John Durham "preliminary review" will come out?

Coming late in the day (h/t Fatster) is the somewhat weak and ineffectual response from Judiciary Chairman John Conyers. Acceptance and resignation continue to rule the day. Every day.

ANOTHER OBAMA RECESS APPOINTMENT FOR SOMEONE NOT NAMED JOHNSEN

President Obama has announced yet another recess appointment; the courtesy and propriety that he would not give to Dawn Johnsen:

President Barack Obama, frustrated by Republican obstruction of key administration staffing appointments, will use his power to appoint his pick to run Medicare and Medicaid while the U.S. Congress is in recess, the White House said on Tuesday.

Obama will make the appointment on Wednesday of Dr. Donald Berwick, a healthcare expert he nominated in April to run the vast federal medical programs for poor and elderly Americans, according to White House Communications Director Dan Pfeiffer.

Obama has found the inner spine to recess appoint NLRB member Craig Becker along with 14 other people to a variety of positions from the DOJ to Treasury Department, has stated he will do so for militarized spook James Clapper (who neither side seems to like), and now Donald Berwick.

Obama seems to consider Berwick critical:

Berwick's appointment as administrator of the Centers for Medicare and Medicaid Services (CMS) place him at the heart of Obama's historic healthcare reform, and the role was too vital to leave unfilled, Pfeiffer said.

"CMS has been without a permanent administrator since 2006, and even many Republicans have called on the

Administration to move to quickly to name a permanent head," he said.

Dan Pfeiffer and the White House are full of dung. If "many Republicans" were clamoring for his nominee, even a couple in the Senate, he would not need to recess appoint. What is truly stunning though is that Obama considers this position critical, but not the head of the Office of Legal Counsel, the body that is supposed to be the legal conscience of an administration. Equally galling is the fact the White House trots out the excuse that "CMS has been without a permanent administrator since 2006". Four years is too long for CMS, but *six years* is no problem for the critical Office of Legal Counsel? Really?

As I have repeatedly explained and demonstrated with facts and evidence, Barack Obama had 60 votes for confirmation of Dawn Johnsen to head OLC for the entire second half of last year and sat on her nomination, refusing to even call a vote. The fact that Obama flat out refused to even consider a recess nomination for Dawn Johnsen to an office dying for real leadership, and that he will use the recess appointment power anywhere and everywhere else, ought to be proof to any doubters that the sole reason Dawn Johnsen is not leading the OLC is because Barack Obama did not want her there.

For a President intent on granting retroactive FISA immunity to criminally complicit telecoms, asserting endless claims of "state secrecy" to cover up crimes of the Bush/Cheney Administration, suppressing torture photos, tapes and evidence, ordering the indefinite detentions without trial or due process and ordering the extra-judicial assassination of remote targets (including American citizens), well I guess a person of Dawn Johnsen's morals and ethics indeed might not be convenient. Even given that, why did the White House engage in such crass duplicity with the country and hang Dawn Johnsen out to dry for so long? Why won't anybody ask that question of them and demand a

legitimate answer?

LANNY DAVIS FUDGES AND SHILLS HIS WAY THROUGH ANOTHER OP- ED

Being away to San Francisco to cover the Prop 8 Closing Arguments this week, I am just catching up on a few things. One I would like to point out is the contemptible and disingenuous op-ed Lanny Davis deposited at The Hill:

Two events last week involving elements of the Democratic Party who call themselves the “true progressives” show a danger they represent to the progressive change they say they want to effect. Together they offer President Barack Obama an opportunity for a “Sister Souljah moment” – perhaps to save the Democratic Party majority in both houses of Congress, as well as his progressive agenda in the last two years of his administration.

First was the success of Sen. Blanche Lincoln in June 8’s Arkansas Democratic primary, despite a campaign organized by these self-described progressives, along with certain labor unions.

.....

The second event was a conference on that June 8 primary day, held in Washington and organized by the Campaign for America’s Future, a self-described “progressive” organization, which cheered denunciations of Obama for “retreat on Guantánamo [and] no movement on worker rights or comprehensive

immigration reform,” according to The Washington Post’s Dana Milbank, and shouted down and nearly prevented liberal House Speaker Nancy Pelosi (D-Calif.) from speaking.

.....

President Obama can confirm that the Democratic Party still stands for the centrist, Clintonian combination of fiscal conservatism, cultural moderation and progressive social programs that favor the middle class over the extremely wealthy – the best chance the Democrats have to hold their majorities in both houses of Congress and to enact the progressive changes that the critics on the left say they truly want.

The holier than thou arrogance and self entitled belligerence of Davis is simply stunning. As if Obama has not scorned the progressives and netroots enough already. Davis apparently feels he is the one who gets to decide who is, and who is not, a “true Progressive” and those he deems unfit are due the “Sister Souljah” execution hit. Nice. In the process of whining about progressive activism destroying Democratic party unity, he wants to divide, marginalize and destroy a significant sector of the Democratic party. Clearly Davis’ clarity of thought has been so addled by the toxic brine of the inbred Washington Beltway elitism he cannot see he is committing the very sins he complains of. Either that or he is so cravenly duplicitous he does not care. Davis has a history of such duplicity.

Davis similarly accuses the netroots of being “long on innuendo and personal attacks and short on substance”, which is hilarious for a man lobbying unlinked, uncited and unsupported screed in such a deceptive manner. For instance Davis directly intimates that if/when Blanche Lincoln loses in the general election it will be because of the netroot and labor supported primary challenge of Bill Halter in Arkansas. This bit of self serving dishonesty of course neglects

the fact that if Davis and his fellow centrist corporate shills really cared about retaining the seat in the general election, they should have supported Halter who arguably was a stronger candidate in the general than Lincoln. Not to mention that, in the general, Lincoln will be the only, and unified, Democratic candidate and thus will be judged on her record by the voters of Arkansas. Apparently Mr. Davis does not approve of the democratic concept of voters being able to express their choice in a primary and thinks only the wise sages of the Washington Beltway get to say who the party choice is.

As to his specific arguments in relation to Lincoln, Davis neglects to mention that the majority of Arkansas voters supported the public option, it is just that he and his corporatist doppelganger Blanche Lincoln who did not. Mr. Davis also failed to admit the only version of "health reform" Lincoln would grudgingly vote for was one that gave her constituents expensive health *insurance* but little in the way of more or usable health *care*. Par for Davis' disingenuous course.

The other manufactured poutrage Davis throws down from his grandiose high horse related to the CAF presser where Nancy Pelosi was heckled by a noisy group of protesters on June 8th. Davis dishonestly intimates in his op-ed that the subject hecklers were the progressive netroots and CAF members he so despises protesting over the public option.

But if Davis had possessed any intellectual integrity or journalistic professionalism, he would have researched and realized the hecklers were not the netroots/CAF crowd, but instead were a separate and limited single issue group of nursing home professionals from an unrelated association known as ADAPT who were concerned about the Community Choice Act relating to long term care provisions for the elderly. Instead, Davis relied on an emailed report from a friend who was not at the event, but sent Davis a

missive after reading about the conference from an unknown source. Oh, and a terminally shallow Washington Post column by the supposed humorist Dana Milbank. What a paragon of reportage Lanny Davis is.

Davis closes out his fine whine with this sage wisdom:

President Obama can confirm that the Democratic Party still stands for the centrist, Clintonian combination of fiscal conservatism, cultural moderation and progressive social programs that favor the middle class over the extremely wealthy – the best chance the Democrats have to hold their majorities in both houses of Congress and to enact the progressive changes that the critics on the left say they truly want.

Well, yeah, I guess. Or Mr. Obama could, alternatively, pull out of his hazy downward spiral and demonstrate he is the leader of the whole party, and entire country, and not just the centrist corporatist hacks like Lanny Davis.

Go “Sister Souljah” yourself Lanny Davis, you plutocratic Beltway corporatist huckster.

[The attached video is from a December 17, 2009 encounter Jane Hamsher had with Lanny Davis on MSNBC]

BP WELL BORE/CASING INTEGRITY ISSUES AND SENATOR NELSON’S STATEMENTS

One week ago, on the morning of June 7, I wrote about questions on the substantive physical

integrity of the BP Macondo well casing and bore, and statements by Florida's Senator Bill Nelson on the same, as well as potential resulting seepage from the sea floor surrounding the well head. To say the least it raised a few eyebrows.

I have again attached the FDL video from the appearance Nelson made on the Andrea Mitchell MSNBC show where he became the first official to materially discuss the game changing issue of sea floor seepage from a structurally compromised well below the surface. Since Nelson first made the statements and raised the questions, I have spoken to his office several times.

Here is a quote given directly to Emptywheel/Firedoglake by Senator Nelson:

Why do scientists and others suspect the well casing is breached beneath the seafloor? Well, for one, in one of my briefings I learned that a lot of mud used in the so-called "top kill" attempt didn't come back up after it was pumped down there.

Clearly, from Senator Nelson's quote, he has received multiple briefings in addition to the information in the public domain, and he is hearing other private disturbing reports. Quite frankly, this should be of no shock in light of that which is, and was, already in the public domain. In this post, mindful of the fact there is likely a wealth we in the public do not yet know, I would like to delve into the public evidence Senator Nelson was relying on and why this is an issue that should, and must, remain squarely in the forefront of public and media conscience.

First off, it is clear Senator Nelson's measured statements to Andrea Mitchell were not an off the cuff or uninformed gaffe by Nelson. Quite the contrary, he and his staff had been probing the issue of the integrity of the well bore long

prior to the MSNBC appearance. On June 2, Sen. Nelson directed the following correspondence to BP:

June 2, 2010

Mr. Lamar McKay
Chairman and president, BP America, Inc.
501 Westlake Park Boulevard
Houston, Texas 77079

Dear Mr. McKay:

I understand the priority of your company right now is capping the Deepwater Horizon well. But new information about the accident has come to light in two recently published accounts that raise serious questions I hope you can promptly address.

Specifically, a recent Wall Street Journal account indicates that BP altered the design of the Deepwater Horizon well even up to five or six days before the rig exploded. And one of these design decisions, according to drilling experts cited in the Journal, could have left the well more vulnerable to the blowout that occurred April 20.

Also, a Washington Post report cites sources including a BP official saying that sometime during or after the recent abortive top kill operation, new damage was discovered inside the underground well. Some of the drilling mud that was forced into the well was moving sideways into rock formations, sources told the newspaper.

If the sourced information is accurate and mud leaked out the side of the well casing, oil and gas likely are leaking beneath the seafloor as well, according to Professor Ian R. MacDonald, an oceanography expert at Florida State University who advised my staff.

Both of the published accounts, then, raise serious questions. Please address these accounts and provide my staff with any and all information and documents regarding the following:

- The discovery of breaks or leaks in the well casing beneath the seafloor;
- Records of any monitoring BP is undertaking of the Deepwater Horizon wellbore for structural integrity;
- Records of any monitoring of the seafloor surrounding the Deepwater Horizon well, including any geological or geophysical information showing changes in the formations within the proximity of the Deepwater Horizon well;
- Records reflecting whether any oil, natural gas, or residual drilling mud might be migrating to the seafloor beyond the boundaries of the casing, including any analysis of how this might impact the drilling of two relief wells or other methods to mitigate the flow of oil;
- All documents related to BP's casing strategies for wells in the Macondo prospect.

Thank you in advance for your prompt response.

Sincerely,

Bill Nelson

The first of the two articles Nelson relies on in his June 2 correspondence to BP is from the Washington Post on May 31, 2010. After noting that drilling experts were afraid the failed "Top Kill" attempt by BP, which involved shooting drilling mud down through the heavily damaged blow out preventer (BOP) and into the well "might have done further damage to the well", the Post article stated:

Sources at two companies involved with the well said that BP also discovered

new damage inside the well below the seafloor and that, as a result, some of the drilling mud that was successfully forced into the well was going off to the side into rock formations.

“We discovered things that were broken in the sub-surface,” said a BP official who spoke on the condition of anonymity. He said that mud was making it “out to the side, into the formation.” The official said he could not describe what was damaged in the well.

Therein lies the issue at the heart of the issue regarding the lack of well integrity; with the Post citing multiple (if some unnamed) sources confirming the well casing was completely breached to such an extent that, when the Top Kill attempt was made, they lost drilling mud out through the breached casing, well walls and into the surrounding rock formation. Now the other thing I find absolutely fascinating about this Washington Post article in the discussion of Dr. Steven Chu and the Department of Energy (DOE) tucked in toward the end:

“At the end of the day, the government tells BP what to do, and at the end of the day, we will hold BP accountable for all of this,” she said.

She also sought to portray the administration as in charge and engaged. She said an administration “brain trust” led by Energy Secretary Steven Chu urged BP to stop adding pressure to the well through the top-kill maneuver because “things could happen that would make the situation worse.”

But she stopped short on CBS of saying that Chu ordered an end to the top-kill maneuver.



Well, Carol Browner may have “stopped short” of saying that Dr. Chu and the DOE

were the ones who ordered the premature termination of the ill fated Top Kill attempt by BP, but it is pretty clear that is *exactly* what happened.

A decent question is by what mechanism did Chu and DOE come to be so in the middle and calling the shots on the Top Kill operation? Not that DOE has no interest, but MMS/Department of Interior are the lessors, and generally the well operation authority, for the government for this area of the Gulf; why is DOE micro-managing well operations? A copy of the actual BP lease for the Macondo Well at Mississippi Canyon 252 is here. And who else from DOE beside Steven Chu was tasked to this "brain trust" and calling shots for the BP Macondo catastrophe reclamation effort? What information and evidence regarding the compromised and blown state of the Macondo Well are they *still* withholding from the public? Oh, and another thing, under the terms of the lease, BP was, and is, supposed to be providing weekly reports, well logs and other information to MMS. Where is all that information, and why is none of it, apparently, available to the public?

The Wall Street Journal article Nelson cited only reinforces the the above facts, issues and questions, but also gives a view of how rickety the BP casing work was on its Macondo well, why there was an almost immediate blowout and why it is a given there is little, if any, integrity of the well bore:

By April 14, when BP filed the first of three permits that would later be amended, the London-based oil company had already faced many problems with the well, including losing costly drilling fluid and fighting back natural gas that tried to force its way into the well. The problems had caused BP to use eight pieces of steel pipe to seal the well, rather than the planned six pieces. The permit filed on April 14 dealt with the eighth and final section, which hadn't

yet been installed in the well.

BP had hoped to get a 9 7/8-inch pipe—big enough to handle a lot of oil and gas—into the reservoir. But for the final section, the largest pipe they could fit was a 7-inch pipe. The company had to decide whether to use a single piece of pipe that reached all the way from the sea floor down to the oil reservoir, or use two pipes, one inside the other.

The two-pipe method was the safer option, according to many industry experts, because it would have provided an extra layer of protection against gas traveling up the outside of the well to the surface. Gene Beck, a longtime industry engineer and a professor at Texas A&M University, said the two-pipe method is “more or less the gold standard,” especially for high-pressure wells such as the one BP was drilling.

But the one-pipe option was easier and faster, likely taking a week less time than the two-pipe method. BP was spending about \$1 million per day to operate the Deepwater Horizon.

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At 9:54 a.m. on April 15 BP filed another permit informing the MMS of a correction. Rather than using a 7-inch-wide pipe the whole way, it planned to run a tapered pipe that was wider at the top than at the bottom. This was approved by the MMS seven minutes later.

Then, at 2:35 p.m., BP filed another revision. This one informed the MMS that it had “inadvertently” omitted mention of a section of pipe already in the well. Four and one-half minutes later, MMS approved this permit also.

Last year, the MMS floated a proposal to require all companies to “document and

analyze" all major changes. BP responded during a comment period that the proposed safety rules were unnecessary.

Less than five days and a whole lot more warning signs later, the Macondo well had blown, the Deepwater Horizon rig had exploded and was on fire and the biggest environmental disaster in American history was well underway. And now, 55 days later, and a series of ever more destructive and futile attempts to stanch the flow of hydrocarbon from the mouth of the Macondo, we stand with a well head leaking more than ever into the waters of the Gulf of Mexico and its fragile ecosystem. Not to mention serious concerns as to whether the oil and gas pollutants are also seeping up from the immediately surrounding sea floor.

To return to the original issue of this post, it appears quite clear Florida's Senator Bill Nelson was on very solid ground with his statements about the compromised state of the Macondo well casing and well bore walls, there is a record of everyone from BP officials to government officials to drilling professionals to outside experts agreeing on the substantial loss of well integrity. The only part of the well that appears to still have any known integrity is the cement collar immediately below the well head, and there is little reason to believe even that will necessarily remain intact under the circumstances.

The only question at this point whether or not there has been seepage or leakage detected from the sea floor surrounding the Macondo well head as suggested by Senator Nelson and Professor MacDonald and, if so, to what extent. Senator Nelson and the public are entitled to answers from BP, and for that matter from the Obama Administration and its officials, to the material and germane questions raised in Nelson's June 2 letter to BP, and they are entitled to them immediately. Lastly, the Obama Administration, the DOE and its head Steven Chu, and BP should all explain exactly what role each

played in the ill fated Top Kill and Junk Shot operations, and why the DOE, and through what agents, was so centrally involved in the Top Kill/Junk Shot and what damage they caused to the Macondo well structure in the process.

BP OIL SLICK THE RESULT OF REPUBLICAN DOJ AND REGULATORY POLICY

The economic and environmental damage resulting from the exploding fireball compromise of the Deepwater Horizon oil platform may be unprecedented, with the potential to emit the equivalent of up to four Exxon Valdez breakups per week with no good plan to stop it. There will be plenty of finger pointing among BP, Transocean and Halliburton, while it appears the bought and paid for corporatist Congress put the screws to the individual citizens and small businesses by drastically limiting their potential for economic recovery; all in the course of insuring big oil producers like BP have effectively no damage liability for such losses.

How did this happen? There are, of course, a lot of pertinent factors but, by far, the one constant theme underlying all is the mendacious corporate servitude of the Republican party, their leaders and policies. The arrogance and recklessness of BP and its oily partners gestated wildly under the Bush/Cheney administration.

Until the turn of the decade, BP had a relatively decent safety and environmental record compared to others similarly situated. Then BP merged with American oil giant Amoco and

started plying the soft regulated underbelly of Republican rule in the US under oil men George Bush and Dick Cheney. Here from the Project On Government Oversight (POGO) is an excellent list of BP misconduct, almost all occurring and/or whitewashed under the Bush/Cheney Administration. If you open the door, foxes eat the chickens.

But it is not just regulatory policy behind the open and notorious recklessness of BP and its ilk, it is intentional policy at the Department of Justice as well. Here is how the former Special Agent In Charge for the EPA Criminal Investigative Division, Scott West, described the DOJ coddling of BP under the Bush/Cheney Administration:

In March 2006, a major pipeline leak went undetected for days, spilling a quarter-million gallons of oil on the Alaskan tundra. The spill occurred because the pipeline operator, British Petroleum (BP), ignored its own workers warnings by neglecting critical maintenance to cut costs. The spill sparked congressional hearings and a large federal-state investigation. Despite the outcry, in a settlement announced in late October 2007, BP agreed to one misdemeanor charge carrying three-year probation and a total of only \$20 million in penalties (a \$12 million fine with \$8 million in restitution and compensatory payments).

The settlement resulted from a sudden U.S. Justice Department August 2007 decision to wrap up the case, according to West. That precipitous shutdown meant

Felony charges would not be pursued and the agreement foreclosed any future prosecutions. No BP executive faced any criminal liability for a spill second in size only to the Exxon Valdez;

The fines proposed by Justice (to which BP immediately agreed) were only a fraction of what was legally required under the Alternative Fines Act. EPA had calculated the appropriate fine levels as several times what Justice offered BP – ranging from \$58 million to \$672 million, depending upon the economic assumptions; and

The BP Alaska settlement is part of a pattern of “lowball” corporate public safety and pollution settlements engineered by the Bush Justice Department. In that October 2007 settlement package, Justice asked for only \$50 million in fines for the BP Texas refinery explosion in which 15 people died – penalties not carrying strong deterrent value for a big multi-national corporation

The above is verbatim from a formal complaint filed with the Inspector General of the DOJ, Glen Fine, by West and a group known as Public Employees for Environmental Responsibility (PEER). The complaint went on to quote West as follows:

Never ...have I had a significant environmental criminal case shut down by the political arm of the Department of Justice, nor have I had a case declined by the Department of Justice before I had been fully able to investigate the case. This is unprecedented in my experience.

When a chief agency criminal investigator cannot get traction for the prosecution of crimes, and considers the internal DOJ policy to be

complicit, you might have a problem. It appears, however, the complaint went nowhere, which is not IG Glen Fine's fault as, once again, DOJ accountability has been prevented by the fact that, unique to executive agencies, the DOJ IG has no jurisdiction over the conduct of the attorneys in the DOJ and goodness knows neither OPR nor David Margolis would countenance such an investigation.

By the way, since I have not seen anybody else mention it, much less the Obama/Holder DOJ appear to care, it should be pointed out that BP, despite the bend over sweetheart comprehensive deal the Bush DOJ worked out for them, is *still* on at least two different criminal probations for their malevolent reckless and intentional conduct. One case was for the Alaska spill and BP was placed on criminal probation for three years starting in December 2007. The other case was a felony plea resulting from the Texas City Refinery explosion. Here is the plea agreement from the Texas City Refinery case and here is the concurrent statement of facts in support thereof.

As special Agent Scott West complained, they were indeed sweetheart deals cut in a comprehensive settlement swath by the Bush DOJ; nevertheless there are still multiple criminal probations BP is still operating under. Where is the DOJ on this now? Contemplating a third strike, repeatoffender takedown of BP? No, there has been nary a peep in this regard from the Obama/Holder DOJ. In fact, the only lawyers DOJ has indicated they are assigning the BP Deepwater Horizon catastrophe are Civil Division and Natural Resource Division talking heads Tony West and Ignacia Moreno. Nope, par for the course, the DOJ is sending managers to smooth the waters, not prosecutors and investigators to bring accountability.

The DOJ under the politicized Republican rule of Bush and Cheney instituted a preference for coddling corporate malfeasants like BP and Exxon

with lax civil measures instead of punitive criminal prosecutions and, in the process, created a get rich windfall program for their friends to serve as “monitors” for the civil settlements. The policy was begun when Bush first took office and was formally instituted as DOJ policy by Bush/Cheney water carrier Paul McNulty in 2006. From an April 2008 New York Times article by Eric Lichtblau:

In a major shift of policy, the Justice Department, once known for taking down giant corporations, including the accounting firm Arthur Andersen, has put off prosecuting more than 50 companies suspected of wrongdoing over the last three years.

Instead, many companies, from boutique outfits to immense corporations like American Express, have avoided the cost and stigma of defending themselves against criminal charges with a so-called deferred prosecution agreement, which allows the government to collect fines and appoint an outside monitor to impose internal reforms without going through a trial. In many cases, the name of the monitor and the details of the agreement are kept secret.

....

But critics of the agreements question that assertion. Charles Intriago, a former federal prosecutor in Miami who specializes in money-laundering issues, said that huge penalties, like the \$65 million fine for American Express Bank International in 2007, were “peanuts” compared with the damage posed by a criminal conviction.

Neutering the criminal deterrent of the DOJ criminal process for big business and corporate interests, and gutting of regulatory agencies, is the Republican ethos. It is what they live for, and what gets us where we are with catastrophes like the Gulf oil slick. A guest

poster at Digby, Debcoop, hit the nail on the head:

The fault lies with the ideology and mores of the Republican party and its theory of government. Their solution to this country's energy's future is to drill anywhere and everywhere. In their theory of government, government has no right to control who, what, where and how the natural resources of this country or this planet are exploited or not exploited, resources that are needed by us all and are needed to protect us all. Like my friend Jim Gilliam said in a private email, government is supposed regulate corporate behavior not just be their willing partner/follower. This is a lesson that we all need to keep in mind and that includes the president.

In the Republican theory of government, government regulation is inherently evil or at least counterproductive. So under George Bush et al, the only regulation in the Gulf has been self regulation. This oil spill is the fault of Republican ideology.

It is who the Republicans are, and what they do. And when they cannot accomplish their goals by legislating in service to corporate masters, they pack the Supreme Court with corporatist ideologues like Roberts, Alito and Thomas. The result is directly displayed by the 2008 decision in *Exxon Shipping Co. v. Baker*:

...a nakedly activist decision that pulls its standard for limiting damages out of thin air, demonstrates hostility to the role of Congress, and continues a pattern of ignoring the Framers' views on the importance of civil juries. Progressives would do well to treat this decision with resounding scorn, and highlight it as a textbook example of why the Supreme Court matters.

The case arose from the 1989 Exxon Valdez spill, wherein Exxon allowed Joseph Hazelwood, a relapsed alcoholic, drunk at the time, to the helm of a massive oil tanker navigating the treacherous waters of Alaska's Prince William Sound at night. The ship ran into a reef, ruptured and spilled 11 million gallons of crude oil, devastating the Sound's fragile and pristine ecosystem. Grant Baker is one of 32,000 commercial fishermen and Alaska Natives that sued Exxon for their economic losses and for punitive damages against Exxon.

More than 6,000 of these victims have died during the course of this litigation, which Exxon has tenaciously prolonged for 16 years with appeal after appeal. In 2006, the Ninth Circuit Court of Appeals cut what was originally a \$5 billion jury verdict down to \$2.5 billion. Today, the Court cut this again for Exxon to a maximum of \$500 million.

It is not just the Republicans however, Democrats have become the same kind of servile lackeys for big corporate interests as the Republicans. The Obama DOJ has continued the Bush/Cheney/McNulty policy of coddling corporate criminals with civil treatment as opposed to hard criminal prosecution and conviction of both corporations and their leaders. And if Barack Obama follows through with his impostrous determination to appoint a "moderate consensus builder" like Elena Kagan to replace John Paul Stevens, you can expect even more corporatist decisions from the Supreme Court.

Business/government symbiotic corporatism is becoming the defining characteristic of our government; the United States is on the road to neo-feudalism in a land run by the New Robber Barons. The oil slick in the Gulf can either be a wake up call, or grease for a further slide down the current slope.

UPDATE: Jason Leopold has a new article up at Truthout that meshes perfectly with this post. As I noted above, BP was on criminal probation for the Texas City Refinery fire; Jason follows up with the literally dirty details of just how repetitively and badly BP has wantonly violated said probation:

“It was the most comprehensive and detailed investigation the CSB has ever done,” Bresland said March 24, marking the fifth anniversary of the refinery explosion. “Our investigation team turned up extensive evidence showing a catastrophe waiting to happen. That cost-cutting had affected safety programs and critical maintenance; production pressures resulted in costly mistakes made by workers likely fatigued by working long hours; internal audits and safety studies brought problems to the attention of BP’s board in London, but they were not sufficiently acted upon. Yet the company was proud of its record on personnel safety.” According to OSHA, BP has not only failed to comply with the terms of its settlement agreement, it has knowingly committed hundreds of new violations that continue to endanger the lives of its refinery workers. Still, as highlighted in a January 2007 report issued by a panel chaired by former Secretary of State James Baker III, systemic issues related to process safety were not limited to the firm’s Texas City refinery. In fact, they were widespread.

Leopold’s article is a good read and gives a good bead on the reckless operating philosophy of BP which gestated under the lax regulatory and prosecutorial Republican regime of Bush/Cheney as discussed in the body of this post above.

SEC: COXSLACKERS & BUSHWACKERS FIDDLED WHILE WALL STREET BURNED

The big outrage de jour making the rounds in the media currently is the porn scandal at the Securities and Exchange Commission (SEC). This report from the Washington Post is typical of the reporting coming out of the main media:



Republicans are stepping up their criticism of the Securities and Exchange Commission following reports that senior agency staffers spent hours surfing pornographic websites on government-issued computers while they were supposed to be policing the nation's financial system.

California Rep. Darrell Issa, the top Republican on the House Oversight and Government Reform Committee, said it was "disturbing that high-ranking officials within the SEC were spending more time looking at porn than taking action to help stave off the events that put our nation's economy on the brink of collapse."

He said in a statement Thursday that SEC officials "were preoccupied with other distractions" when they should have been overseeing the growing problems in the financial system.

Would it be too much for the media to actually think for a moment before they perform stenography for alarmist Darrell Issa? Because even a moment's pause would yield the realization that Republican outrage on this is

absurd and duplicitous. In fact the SEC – IG report produced for another of the Republican howlers, Iowa Senator Charles Grassley, proves the pornification of the SEC was born and grown during the Bush/Cheney Administration and the leadership of Republican stalwart and longtime Issa colleague and friend Chris Cox. The IG Report also demonstrates quite clearly that the vast majority of the incidents occurred during Cox’s reign during the second Bush term, although there were some that continued on during the Obama Administration.

But it is not just that the problem was born and matured under Bush and Cox, it is the fact that it is symptomatic for the emasculation and gutting of the SEC which occurred at their hands and express direction. It was not a bug, but a feature. As Bloomberg News reported last year:

Under former SEC Chairman Christopher Cox, the agency instituted policies that slowed cases and led enforcement-unit lawyers to conclude commissioners opposed fining companies, the Government Accountability Office said in a report today. An unidentified attorney said it was “widely felt” commissioners prevented the division from “doing its job,” according to the report.

“Some investigative attorneys came to see the commission as less of an ally in bringing enforcement actions and more of a barrier,” the GAO said. Cox’s policies “contributed to an adversarial relationship between enforcement and the commission.”

The non-partisan GAO report on the Bush/Cox SEC found poor management, determination to not pursue cases, lack of transparency, and collusion with business interests. It was the Republican philosophy and direction which neutered the SEC. It is little wonder they took to surfing the net for porn, they literally had nothing else to do under Republican

“leadership”.

So perhaps the media stenographers ought to remember this when suddenly howling duplicitous Republican shills like Issa and Grassley want to tar, feather and undermine the SEC now that Democratic leadership, led by Mary Schapiro, have cleaned the agency up, turned it around and put it back to work doing its oversight and enforcement job.

On a related note in things financial, our friend Selise is going to be along in comments to discuss her Seminal Diary on financial reform and the commendable Fiscal Sustainability Conference and Teach-In occurring next week in Washington DC. This is a worthy effort and is supported by a variety of progressive interests including Jamie Galbraith and my friend and former colleague, Ian Welsh.

(graphic by nathan bransford)

SCOTT BLOCH COPS A PLEA FOR BLOCHING JUSTICE

You might remember our old friend Scott Bloch, the former head of the United States Office of Special Counsel under the Bush/Cheney Administration. The OSC’s primary mission is to safeguard the Federal merit system by protecting federal employees and applicants from prohibited personnel practices, especially reprisal for whistleblowing. You might also remember Bloch was the one David Iglesias was sure could unravel the US Attorney Purgegate and nail Karl Rove. That didn’t work out so well, and then Bloch got in hot water himself for purging his own computers with the pros from “Geeks on Call” performing a “seven level wipe” for him.

Well, to make a long story short, it appears Lady Justice has finally caught up to the intrepid BlochHead. From the Washington Post:

Scott J. Bloch, the former director of a federal office in charge of helping shield government whistleblowers from unfair treatment, plans to plead guilty to withholding information from congressional investigators after he had his office computer files professionally deleted in 2006.

U.S. prosecutors filed papers in federal court Thursday that accuse Bloch, who led the Office of Special Counsel through much of President George W. Bush's administration, of failing to truthfully answer questions about whether he arranged for private computer technicians to "scrub" his office computer and that of other political appointees. This type of filing, known as an information, is made public when a suspect is about to plead guilty to the allegations.

Bloch came under criticism early in his tenure as special counsel for ordering all mention of workplace discrimination based on sexual orientation be removed from OSC's Web site and printed materials. Bloch stated his office lacked the authority to ban discrimination on the basis of sexual orientation.

He was abruptly removed from his post and barred from returning to his office in October 2008 after a meeting with White House officials.

The root here is Bloch is to plea to withholding information about his computer scrape from the House Oversight and Government Reform Committee. A criminal information was filed today, and that means his change of plea to guilty is on the

immediate horizon, very possibly tomorrow. Here is the AP version of the story.

Hilariously enough, Bloch's troubles began when someone *blew the whistle on him*; from a February 2007 Washington Post article:

A trouble-plagued whistle-blower investigation at the Office of Special Counsel – whose duties include shielding federal whistle-blowers – hit another snag this week when employees accused the special counsel of intimidation in the probe.

The Office of Personnel Management's inspector general has been investigating allegations by current and former OSC employees that Special Counsel Scott J. Bloch retaliated against underlings who disagreed with his policies – by, among other means, transferring them out of state – and tossed out legitimate whistle-blower cases to reduce the office backlog. Bloch denies the accusations, saying that under his leadership the agency has grown more efficient and receptive to whistle-blowers.

The probe is the most serious of many problems at the agency since Bloch, a Kansas lawyer who served at the Justice Department's Task Force for Faith-based and Community Initiatives, was appointed by President Bush three years ago. Since he took the helm in 2004, staffers at the OSC, a small agency of about 100 lawyers and investigators, have accused him of a range of offenses, from having an anti-gay bias to criticizing employees for wearing short skirts and tight pants to work.

At any rate, the continuing saga of Bungalow Bloch appears to be nearing an end. Oh well, another name to the Bush Administration convict

list and another update of Hugh's Bush Scandal List needed.

OBAMA KILLED THE JOHNSEN NOMINATION, NOT BEN NELSON NOR THE GOP

It strikes me as necessary to follow up a bit on the death of the Dawn Johnsen nomination to lead the Office of Legal Counsel at the Department of Justice. Specifically, it needs to be clear the conventional wisdom of the main media, and even a surprising number of normally more clear headed progressive bloggers, that the nomination failed because of opposition from Republican obstruction coupled with opposition by Ben Nelson, is completely and patently false.

The false meme was already in play with the first substantive reporting by Sam Stein at Huffington Post as I noted yesterday. It is being propagated by the Washington Post (Republicans and "moderate lawmakers"), the New York Times (conservatives and two Democrats), even progressive stalwarts like Glenn Greenwald and McJoan at DKos have discussed the effects of the Republicans and Ben Nelson on the torpedoed nomination (although, to be fair, neither ascribes full blame on the GOP and Nelson).

Perhaps the best example of purveying the false wisdom comes from Jake Tapper at ABC. Tapper, in an article supposedly about the Obama White House not having the stomach for a fight on Johnsen, nevertheless proceeds to regurgitate the usual suspects:

Senate Republicans opposed her nomination overwhelmingly, meaning Senate Majority Leader Harry Reid, D-

Nev., needed 60 votes to bring her nomination to the floor of the Senate for a vote.

The White House put all the blame on the Republican minority – White House spokesman Ben LaBolt said, “Senate Republicans will not allow her to be confirmed” – but it was a bit more complicated than that.

A Senate Democratic leadership source said that throughout 2009 two Democrats said they would vote against her – Sen. Ben Nelson, D-Neb., and Sen. Arlen Specter, D-Pa. The only Republican of the 40-member GOP caucus who said he would vote for her was her fellow Hoosier, Sen. Dick Lugar, R-Ind.

....

Specter remained opposed to Johnsen’s nomination even after he switched parties in April 2009, but his primary opponent Rep. Joe Sestak, D-Pa., began to attack Specter for his opposition to her nomination.

Johnsen’s nomination expired at the end of 2009, but in January 2010 Specter said he’d vote for her.

This is a bunch of bunk. I have previously written extensively on why there were at least 60 votes for Johnson’s confirmation for the entire second half of last year after Al Franken was sworn in, and why there still were 60 votes for her confirmation this year upon Obama’s renomination, even after the Scott Brown victory in Massachusetts. If you have any question, please click through and refer to those articles; for now though, I want to revisit the false light being painted on Ben Nelson and Arlen Specter on the nomination’s failure.

To date, the only journalist I have seen to even come close to being accurate about Ben Nelson’s status on Johnsen’s nomination is Charlie Savage

at the New York Times, who yesterday briefly noted:

And it was not clear whether Mr. Nelson would join Republicans in trying to block a vote on Ms. Johnsen with a filibuster.

And that is the only germane question. It matters not whether Ben Nelson likes Johnsen, nor even if he would vote for her on the floor; the only salient issue is whether Nelson would vote for cloture and permit a floor vote. Ben Nelson never said he would block cloture. Never. And when questioned by the Indianapolis Star, he said the WH had never even discussed the subject with him.

Nelson said Wednesday that he doubted Johnsen's nomination would be brought to a vote.

"We have to let the administration decide what they want to do," Nelson said. Asked if he has told the administration whether he'd vote for Johnsen, Nelson said he hasn't been asked.

There is no evidence whatsoever Nelson would have voted against allowing the nominee of Barack Obama, the sitting President of his own party, to have an up or down vote. None. How Nelson would have voted on the up or down floor vote is irrelevant as there were far more than the 51 votes for confirmation in an up or down vote. Ben Nelson was not the problem.

Arlen Specter was not the problem either. Specter's office directly confirmed to me that he was, and has been, willing to allow cloture on the up or down floor vote for Johnsen, and likely willing to support her in said up or down vote, ever since his second face to face meeting with Johnsen on May 12, 2009 and Specter confirmed the same to Marcy Wheeler in late February. The failure of the Johnsen nomination

cannot be laid at the feet of Arlen Specter.

Oh, and one other thing should also be kept in mind, there is a very good chance that, if it ever came down to them, either or both of the Maine twins, Olympia Snowe and Susan Collins, would have permitted cloture on a floor vote too. They have a record of not blocking votes on Democratic Presidential nominees going back to the Clinton era and leading Maine women's groups were very optimistic they would allow it on Johnsen if it came down to them (which I also separately confirmed with the groups).

So, it was not Ben Nelson who killed the nomination of Dawn Johnsen, nor was it Arlen Specter or Senate Republicans. No, the sole reason Dawn Johnsen is not leading the OLC is that Barack Obama and his coterie of advisors did not want Dawn Johnsen leading the OLC. The Obama Administration cravenly hung their own nominee out to dry, and the reason is almost certainly that she was not compatible with the Administration's determination to maintain, if not expand, the Bush/Cheney positions on unbridled executive power, indefinite detention without due process as well as warrantless wiretapping and other Fourth Amendment invasions.

You want to know why the Obama White House killed their own nomination of Dawn Johnsen? Glenn Greenwald put it so well that I cannot improve on it and will just adopt and incorporate his spot on words:

virtually everything that Dawn Johnsen said about executive power, secrecy, the rule of law and accountability for past crimes made her an excellent fit for what Candidate Obama said he would do, but an awful fit for what President Obama has done. To see how true that is, one can see the post I wrote last January detailing and praising her past writings, but all one really has to do is to read the last paragraph of her March, 2008 Slate article – entitled

“Restoring Our Nation’s Honor” – in which she outlines what the next President must do in the wake of Bush lawlessness:

The question how we restore our nation’s honor takes on new urgency and promise as we approach the end of this administration. We must resist Bush administration efforts to hide evidence of its wrongdoing through demands for retroactive immunity, assertions of state privilege, and implausible claims that openness will empower terrorists. . . .

Here is a partial answer to my own question of how should we behave, directed especially to the next president and members of his or her administration but also to all of use who will be relieved by the change: We must avoid any temptation simply to move on. We must instead be honest with ourselves and the world as we condemn our nation’s past transgressions and reject Bush’s corruption of our American ideals. Our constitutional democracy cannot survive with a government shrouded in secrecy, nor can our nation’s honor be restored without full disclosure.

What Johnsen insists must not be done reads like a manual of what Barack Obama ended up doing and continues to do – from supporting retroactive immunity to terminate FISA litigations to endless assertions of “state secrecy” in order to block courts from adjudicating Bush crimes to suppressing torture photos on the ground that “openness will empower

terrorists” to the overarching Obama dictate that we “simply move on.” Could she have described any more perfectly what Obama would end up doing when she wrote, in March, 2008, what the next President “must not do”?

I find it virtually impossible to imagine Dawn Johnsen opining that the President has the legal authority to order American citizens assassinated with no due process or to detain people indefinitely with no charges. I find it hard to believe that the Dawn Johnsen who wrote in 2008 that “we must regain our ability to feel outrage whenever our government acts lawlessly and devises bogus constitutional arguments for outlandishly expansive presidential power” would stand by quietly and watch the Obama administration adopt the core Bush/Cheney approach to civil liberties and Terrorism. I find it impossible to envision her sanctioning the ongoing refusal of the DOJ to withdraw the January, 2006 Bush/Cheney White Paper that justified illegal surveillance with obscenely broad theories of executive power. I don’t know why her nomination was left to die, but I do know that her beliefs are quite antithetical to what this administration is doing.

There is your answer. In brutal black and white. And progressives better wake up and start paying attention, because what you see here is extremely telling about the mindset and backbone, or severe lack thereof, the Obama White House has for the coming nomination and confirmation battle to replace Justice Stevens. If past is prologue, we are on the cusp of shifting the ideological balance of the Supreme Court severely to the right – under a Democratic “liberal” President.