

Steven Bradbury to be head of the Office of Legal Counsel and to submit another nominee.

The OLC—the Office of Legal Counsel—is a small office. Most people don't even know it exists. But it really has a lot of power, especially in this administration. Their legal opinions are binding on the executive branch of Government.

In August of 2002, OLC issued the infamous torture memo. This memo narrowly defined torture as limited only to abuse that causes pain equivalent to organ failure or death. It also concluded the President has the right as Commander in Chief to ignore the torture statute—the law of the land—which makes torture a crime. This memo was the official Bush administration policy for over 2 years. This was a memo produced by the Office of Legal Counsel.

Jay Bybee, who was then head of that office, signed the torture memo. Unfortunately, Mr. Bybee was confirmed to a lifetime appointment as judge on the Ninth Circuit Court of Appeals before Congress and the American people learned about this infamous torture memo.

Jack Goldsmith succeeded Jay Bybee as head of the Office of Legal Counsel. We only recently learned about the critical role Mr. Goldsmith played. As head of the office, he revoked the misguided Office of Legal Counsel opinions regarding warrantless surveillance.

Deputy Attorney General Jim Comey has emerged as an almost heroic figure time and again as we have learned of his role in the Justice Department under Attorneys General Ashcroft and Gonzales. Mr. Comey supported Mr. Goldsmith's actions. This led to the infamous showdown at the bedside of Attorney General John Ashcroft where White House Chief of Staff Andrew Card and former Attorney General Alberto Gonzales, then White House Counsel, tried to strong-arm Mr. Ashcroft into overruling Mr. Goldsmith.

In June 2004, Mr. Goldsmith revoked the Bybee torture memo. Shortly afterward, he left the Justice Department.

In 2005, President Bush nominated Steven Bradbury to succeed him. He has been the de facto head of the Office of Legal Counsel for over 2 years.

During the confirmation process, Mr. Bradbury has refused to answer questions from Judiciary Committee members regarding torture.

In November 2005, I initially objected to Mr. Bradbury's nomination, and I said:

Mr. Bradbury is currently the acting head of the Office of Legal Counsel. 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 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 are also seriously unresolved questions about Mr. Bradbury's role in the NSA warrantless surveillance programs. Last year, the Justice Department's Office of Professional Responsibility opened an investigation into the conduct of the Justice Department attorneys who authorized the NSA program. In an unprecedented move, President Bush personally denied security clearances to the Justice Department investigators, effectively blocking the investigation. Documents provided to the Senate Judiciary Committee suggest that this internal investigation was looking into whether OLC engaged in misconduct while Mr. Bradbury was acting head of OLC.

In August 2006, Senator KENNEDY, Senator FEINGOLD, and I sent a letter to President Bush calling for him to allow an internal investigation relative to this issue. We have not received a response.

Recent reports regarding Mr. Bradbury's involvement in approving the legality of abusive interrogation techniques provide further evidence of his unsuitability. According to an October 4 article in The New York Times, Mr. Bradbury signed two OLC legal opinions approving the legality of abusive interrogation techniques.

Mr. Bradbury reportedly authored an opinion on so-called "combined effects," which authorized the CIA to use multiple abusive interrogation techniques in combination. According to The Times, then-Attorney General Alberto Gonzales approved this opinion over the objections of then-Deputy Attorney General Comey, who said the Justice Department would be "ashamed" if the memo became public.

The Times also reports that Mr. Bradbury authored and Alberto Gonzales approved an OLC opinion concluding that abusive interrogation techniques such as waterboarding do not constitute cruel, inhuman or degrading treatment. This opinion was apparently designed to circumvent the McCain Torture Amendment, then being considered by Congress, which clarified that such treatment is absolutely prohibited.

Mr. President, in the interest of turning the floor over to my colleague from North Dakota, I will not read this entire statement, but I do wish to tell you that I believe the cumulative evidence against Mr. Bradbury raises serious questions as to whether he should even continue in this interim capacity as head of the Justice Department's Office of Legal Counsel.

We are not asking the President to nominate some Democrat for the position. We don't expect that. But we ask him to nominate someone with professional integrity who can restore the morale of this Department and the luster which should be part of this important office. Jack Goldsmith describes himself as a conservative Republican, but he stood up to a White House when it came to issues of torture and warrantless surveillance.

I urge the President to withdraw Steven Bradbury's nomination and submit another nominee for Assistant Attorney General for the Office of Legal Counsel.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from North Dakota.

Mr. DORGAN. How much time remains in morning business?

The ACTING PRESIDENT pro tempore. Twenty minutes.

THE OIL CRISIS

Mr. DORGAN. Mr. President, the front page of a recent New York Times article and front page of a Wall Street Journal issue said: "Ethanol's Boom Stalling As Glut Depresses Price." Wall Street Journal article says: "Ethanol Boom Is Running Out of Gas." Last night on "NBC Nightly News," featured a piece about the closing of ethanol plants and the problem with the production of ethanol as a substitute for oil.

Mr. President, I want to talk a moment about that because we are unbelievably dependent on foreign oil. If anybody thinks they should nap through this or sleep through this vulnerability, they are dead wrong because 60 percent of the oil we need in this country and use every day we get from outside of our country. We stick little straws in this planet of ours and suck oil out. We suck out about 84 million barrels of oil every single day. We use one-fourth of that in this country every day, or about 21 to 22 million barrels of oil. So of all the oil we suck out of this planet every day, we use one fourth of it just in this little space called the United States of America.

The problem with using one fourth of it is that 60 percent of that oil which we use comes from other countries, much of it from troubled parts of the world, such as Saudi Arabia, Kuwait, Iraq, and Venezuela. Well, if tomorrow, God forbid, somehow the import of oil into this country were interrupted, we would be flat on our back economically.

We get up in the morning and just take it all for granted. We get up, we get out of bed and rub our eyes, then flick a switch, and the lights go on. We get in the car, turn the key, and the engine starts. We take it all for granted. But what happens at some point if we shut off the petroleum, shut off the electricity, and see what life is like, see what our economy is like?

So we decided to do something about that. If we are unbelievably dependent on and vulnerable when it comes to foreign oil, what do we do? We begin to produce energy in our farm fields.

We produce biofuels. That is not a new thing. It has been around over a century. I was at a biodiesel plant the other day. It was a grand opening. I pointed out there that the first known use of vegetable oil as fuel for a diesel engine was a demonstration at the World's Fair in the year 1900. Rudolf

Diesel later experimented with fuel made from peanut oil or biodiesel for engines he was developing. So this is not new.

All of a sudden our country has decided we should produce biofuels—ethanol, for example—and we have begun to do that. Oil companies don't like it very much. The OPEC countries don't like it very much. The last thing they want to see is for us to begin to produce not only the fossil fuels in our country, including oil and natural gas, but also biofuels and the renewable energy that can grow in our farm fields. We can take a kernel of corn, and from that kernel of corn with various processes produce fuel that will substitute for fuel oil we now get from troubled parts of the world. That makes a lot of sense to me.

We use about 140 billion gallons or 145 billion gallons of fuel a year. If every single gallon of fuel were blended with ethanol, our total market for ethanol would be about 14.5 billion gallons. The President says let's go to 35 billion gallons. I agree with that. So do most of my colleagues. The Senate has already voted on a bill to produce 36 billion gallons. But how are we going to use 36 billion gallons if we are only blending ethanol at 10 percent? We have to have the E85 pumps. They are producing flex-fuel vehicles in Detroit now, and they have said they are going to get to 50 percent of all the vehicles they produce being flex-fuel vehicles so we can run a fuel that is 85 percent ethanol. E85 they call it.

You might have a flex-fuel vehicle right now—in my State there are about 16,000 to 18,000 flex-fuel vehicles—and there are 23 places in the entire State where you can pull up to a pump and get E85.

In California there are over 270,000 flex-fuel vehicles, and there is one reported gasoline pump in the entire State of California that pumps E85. Think of that, one pump.

Let me describe what some of the obstacles are. I have long been concerned if we are going to produce ethanol—and we should and we must—we have to not only produce it, we have to market it. We have to produce it, then we have to run it through the carburetors and fuel injectors of vehicles. If we don't have the market, that whole industry collapses.

Let me give some examples of why we don't have more E85 pumps. No. 1, we have some folks in here who want to produce ethanol and support all that, but they don't support any kind of mandate that would require that we have an infrastructure out there to actually use the ethanol. We are now starting to see the results of that. Let me describe that with an article in the Wall Street Journal: "Fill Up With Ethanol? One Obstacle Is Big Oil." April 2, this year:

Oil companies employ a variety of tactics that help keep the E85 fuel out of the stations that bear the company name. For instance, franchisees are sometimes required

to purchase all the fuel they will sell from the oil company. Since oil companies generally don't sell E85

That is, 85 percent ethanol that you would use in a flex fuel vehicle—the station can't either.

Let me describe some of the ways the major brand retailers are trying to prevent the widespread marketing of ethanol. ExxonMobil and BP require their franchise stations—and this is directly from the Wall Street Journal article—require their franchise stations to buy fuel exclusively from them. Neither company offers E85. So the station owners must apply for an exception if they wish to sell E85, or 85 percent ethanol.

A ConocoPhillips memo to franchisees says the company doesn't allow E85 sales on the primary island, under the covered canopy where gasoline is sold. Stations must find another spot. As a result, it isn't quite as simple for a driver to decide on the spur of the moment to fill up with E85.

ConocoPhillips says you can't market E85 with the same bank of pumps on the same island.

Chevron says it requires Chevron-Texaco branded stations to keep E85 off their primary signs listing fuel prices. To show the fuel's price, and alert approaching drivers that E85 is for sale, the stations have to erect a separate sign.

BP will not allow its franchisees to offer payment by credit card for E85.

Does anybody see a pattern? These companies sell oil and gas. I want them to do well. But I hope they want our country to do well at the same time. Our country will do well by becoming less dependent on the Kuwaitis and Saudis, the Venezuelans. And we do that by expanding our supply of renewable energy.

Guess what. These companies say we are not interested in that. That is not our product. So, by the way, we have 170,000 gasoline stations in our country, about 170,000 gas stations on every corner of this country, virtually, and 1,200 of them have E85 pumps. There are 170,000 places you can pull up to buy gasoline, and 1,200 of them have E85.

If you drive a flex-fuel vehicle and you can run it on 85 percent ethanol—that is the way they sell the vehicle, you can run on either gasoline or 85 percent ethanol—and you want to choose one of 170,000 gas stations in this country, 168,800 or so are not going to have E85.

Assistant Secretary Andrew Karsner, who is the Assistant Secretary of the Office of Energy Efficiency and Renewable Energy at the Department of Energy, said at a hearing I chaired earlier this year that last year we installed around 450 E85 pumps across the entire country. As I calculate it, if we continue to install 450 E85 pumps a year, that means in about 100 years we will have almost 50,000 pumps, or in less than one-third of the stations where they are selling gas.

My point is simple. I see these stories in the Wall Street Journal and the New York Times. I know, based on what is

reported, what the major oil companies are doing. It is not just setting ethanol up for failure, it is setting this country up for failure. We cannot move from 60 percent dependence on foreign oil to 69 percent dependence on foreign oil, and that is where the experts say we are headed.

If we don't find a way to be less dependent on foreign oil, this country is in trouble. How do we become less dependent? We expand our opportunities for renewable energy, including ethanol. But if we do that, and when we do that, we are set up for failure if the 170,000 gas stations across this country have decided: You can't advertise E85. You have to erect a separate sign. You can't sell E85 at our franchise, we will not allow it. You can't pump it at the main island where you pump other gasoline, we will not allow it. With that sort of thing, it sets this country up for failure, in my judgment.

What should we do about it? The Energy bill we moved through the Senate recently was an Energy bill that provides some grant programs—not nearly enough—some grant programs to help some service stations install biofuels pumps. We are going to need to pump E85 percent ethanol. We are going to need to have blend pumps that blend 30 percent, 40 percent, and 50 percent blends of ethanol and gasoline. We have to do all these things if this country is determined to move in a direction that makes us less dependent on foreign oil.

But our country, it seems to me, is willing to sit back, and Congress is willing to sit back and say: Whatever happens.

We have to make things happen. An infrastructure bill that says if we are going to produce biofuels—and we are, and if we are going to aspire to get 36 billion gallons of biofuels—and we should, then you have to have a plan by which you market that. If you produce it and don't market it, the market for that particular energy collapses, and it will set us back decades.

What should we do? We should, in my judgment, as we move this Energy bill, have an infrastructure provision in the Energy bill that is strong, assertive, bold, and moves in the right direction and sets up a circumstance where either this happens by the market system or you have mandates.

I know nobody likes mandates. But if we are going to be less dependent on foreign oil, we have to find a way to make this happen and make this work. I believe we have an opportunity to do something good for this country. We can just sit back and exhibit a posture somewhere between day dreaming and thumb sucking and just act as if we are thumbing our suspenders, smoking our cigars, and saying: Ain't it a good life? We are 60 percent on foreign oil. Ain't it a shame ethanol don't work somehow? I know you can't find it down at the local service station because they will not let them market it down there. Ain't it a shame?

It is not going to be a good life if we find someday we don't have this energy

coming in, with 60 percent coming from offshore, and it is not going to be just a shame, it is going to be a catastrophe for this country if we don't put in place the infrastructure to expand our opportunities to produce renewable energy in this country and therefore make us less dependent on sources of foreign oil.

We are going to use our fossil fuels. I support the production of domestic oil and natural gas. I support the continued use of our coal. I increased the President's request by 30 percent for the fossil fuels account, in the appropriations bill that is written in the Energy and Water Development Appropriations Subcommittee that I chair. The President talks a lot about this stuff, but he doesn't commit himself to it. I increased by 30 percent his fossil fuels account. Why? Because coal is our most abundant resource. We are going to have to use it. The question is not whether, it is when we use it, and how. We ought to invest in the research and technology to allow us to use coal in zero emissions plants. I believe we can do that. We can't do this with the baby steps coming from this President. He wants to just baby-step along; a little money here, a little money there. If we are going to make a commitment to use our fossil fuels, we have to make that commitment. But even as we do that, much more needs to be done to deal with the renewable side. We can't at the same time try to advance the interests of fossil fuels in a way that does not contribute to climate change and then say we are going to ignore the renewable side. We have to do both. We have to use the research and the capability of technology to unlock our opportunity to continue to use fossil fuels, but then we have to commit ourselves—our country has to commit itself to renewable energy and to the ethanol and biofuels industry.

The reason I wanted to make this point is, I saw last evening on "NBC News" a big feature story about this subject. I saw it in the New York Times. I saw it in the Wall Street Journal.

You ought not be surprised. I mean, bowl me over? The major gasoline companies do not want to sell E85 because they believe it competes with them? The fact is, what competes with them is the solution to making us less dependent on foreign sources of oil.

It is unbelievable to me that we have this little planet of ours. We circle the Sun, we have 6.4 billion neighborhoods, and half of them have never made a telephone call, half live on less than \$2 a day, and we end up on this little spot called the United States. Our lifestyle is pretty unbelievable. What we have built is special. But we are prodigious consumers of energy, and now we have worked ourselves into a position where we use so much energy in the form of oil from outside of our country, and so much of it comes from very troubled areas of the world, that if we do not in a sober way understand our responsibility to address that, shame on us; and our future will not be very bright.

This is not just some other issue. This is a big issue. The standard of living in this country rests on the issue of our being able to provide the energy. The quality of life in this country rests on our ability to get the energy and produce the energy and acquire the energy, even as we protect the airshed with respect to climate change. All of that is important.

Mr. President, I think this is an important issue. I am going to work with my colleagues. Hopefully, we can get an Energy bill, and when we get this Energy bill we will get this resolved in the right way.

Mr. President, how much time remains?

The ACTING PRESIDENT pro tempore. There remains 3½ minutes.

CHINA

Mr. DORGAN. I don't have enough time, but I want to show my colleagues something I find absolutely fascinating. Let me suggest on a different subject I will consume the 3.5 minutes.

This is the Nail House. This house is in the middle of a whole dug-out excavation area. This is in China. The Chinese Government, the developers, decided we are going to go in, and we are clearing this whole place out. One family said: No, you can't do that to me. It is not legal. It is not fair. We are not going to move. So they came in and excavated around the entire house. Here is the little house in China.

I tell you that because we just released, last week, the Congress Executive Commission on China Annual Report. It is the 2007 annual report. I am a cochairman, SANDY LEVIN, Congressman SANDY LEVIN, is the chairman. I am the cochairman of the Congressional Executive Commission on China. This describes a whole series of things on China, those who are in prison today in China as a result of advocating for human rights and other related issues.

I will tell this story about the Nail House. They call it the Nail House because it is stuck right up out of the excavation. The story did not have such a happy ending for the Nail House. The Chinese, eventually—they must have thought this was funny, the Chinese authorities, by digging around this fellow's house—but they eventually came in and tore the whole thing down and this property was lost. It is pretty hard to take on the Chinese Government.

But one of the things in this report we talk about is what is happening with technology in China, and the ability, outside of the purview of the Communist Government, to control everything; the ability of people to communicate.

Now, the Chinese have thousands of thought police trying to figure out who is visiting the Internet and trying to prevent them from visiting certain sites on the Internet. But there is a trend that is going on in China that is very interesting. Internet use rose from 620,000 in the last 10 years, 620,000, to 160 million Internet users.

Mobile phone ownership went from 3 million to 500 million in the last 12 years, 500 million. China has an estimated 20 million blogs, where people are talking among bloggers' personalized Web pages. In the entire year of 2003, about 4 years ago, the Chinese people sent 137 billion text messages.

Now, I tell you all of that because I think it is going to change things in China. Part of this China Executive Commission is trying to understand what is happening in China. What does that mean for our future? But there are some striking examples of citizen activism these days which are very interesting. This is one, the "nail house," this family, that did not end so well.

But the local officials ignored the mass complaints. But what happened was this picture was on all of the blogs in China, it stirred up a hornet's nest of people willing to demonstrate in the streets on behalf of this family.

But there is one other issue, chemical factory protests in the southeast corner of Xiamen. The local government planned to build a hazardous chemical plant near the center of town. They publicized the information on Web sites and blogs, and citizens responded by overwhelming the local Chinese officials with a million text messages. Later they used blogs and text messages. They organized massive protests and marches that attracted thousands, and finally the local officials suspended the building of a chemical factory in the middle of Xiamen.

Mr. President, I ask unanimous consent for 2 additional minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. DORGAN. Another use of the Internet in China was on a slave labor scandal. In May and June of this year, citizen activists broke open a scandal that rocked China. Thousands of brick kilns were using kidnaped slave labor. They were men, boys, mentally ill, forced to work under heavy guard, often with no pay and very little food.

Parents looking for their missing sons organized on the Internet in China, and they were pleading for Government assistance. They were forced to cover the story in the Chinese press because there was such a mass uprising here. Finally, the Chinese Prime Minister ordered an investigation. Five hundred workers were freed. One hundred sixty people who ran the kilns were arrested. Very few party officials were seriously punished.

But the point is, things are changing. The technology is changing in China. The Burmese monks protest, the activism continues right up to today. While the Chinese Government is attempting to shut down this open and free communications with the thought police, they have got thousands of people trying to regulate Internet use, the fact is, it is not working, and technology and communications are having a profound impact and I believe will continue to have a significant impact in