

Chairman John Thune
Questions for the Record
DOT General Counsel Nominee Steven Bradbury

In your testimony before the Committee, you discussed your tenure as Principal Deputy Assistant Attorney General and Acting Assistant Attorney General at the Justice Department's Office of Legal Counsel (OLC) from 2005-2009. Between 2001 and 2003, in the aftermath of the 9/11 terrorist attacks, OLC issued several opinions regarding enhanced interrogation techniques and the President's war powers. In 2008 and 2009, you authored two separate documents, each entitled "Memorandum for the Files." These memoranda asserted that certain opinions issued between 2001 and 2003 no longer reflected the then-current views of OLC.

Please explain the scope and purpose of the aforementioned memoranda you authored.

Response:

After I became Principal Deputy Assistant Attorney General ("Principal Deputy AAG") for the Office of Legal Counsel ("OLC" or the "Office") in 2004, I participated in decisions to withdraw and supersede previous legal opinions addressing interrogation policies that had been issued by our predecessors in OLC in 2002 and 2003. We determined that the earlier opinions were flawed, in part because they relied on overly broad interpretations of the President's constitutional authorities in war time vis-à-vis the powers of Congress. I was involved in preparing replacement opinions that focused much more narrowly on the specific statutory and treaty provisions necessary to provide the advice needed by senior policy makers and that did not rely on broad assertions of presidential power.

After I became Acting AAG for OLC in 2005 and while I served as the senior appointed official in charge of the Office, I undertook a broader initiative to conduct a comprehensive review of all the post-9/11 legal opinions issued by the Office from 2001 to 2003 relating to war powers. The two memos to files that I prepared at the end of the Bush administration in October 2008 and January 2009 memorialized for senior government officials and for the new incoming Obama team the results of that comprehensive review of the earlier war-power-related opinions of the Office. These memos to files set forth with specificity my conclusions for OLC about the flawed reasoning of the 2001-2003 opinions and advised policy makers across the government as to which opinions and which specific propositions of law had been withdrawn or superseded by OLC and no longer represented the views of the Office. I believe these memos to files were helpful to the new OLC leadership at the beginning of the Obama administration. Among other things, the Obama team decided to post my memos to files on the OLC Web site, where they remain publicly available today.