



this issue:

Dawn Elizabeth Johnsen,
Nominee for Assistant Attorney
General for the
Office of Legal Counsel

Johnsen's Background

Professor of Law, Indiana
University Maurer School of Law

Acting Assistant Attorney
General, Office of Legal Counsel,
U.S. Department of Justice

Deputy Assistant Attorney
General, Office of Legal Counsel,
U.S. Department of Justice

Legal Director, NARAL Pro-
Choice America (National
Abortion Rights Action League)

Staff Counsel, American Civil
Liberties Union Reproductive
Freedom Project

EDUCATION

B.A., Yale University
J.D., Yale Law School

Who is Dawn Elizabeth Johnsen?

On February 11, 2009 President Obama nominated Dawn Elizabeth Johnsen to be the Assistant Attorney General for the Office of Legal Counsel in the U.S. Department of Justice.

The Office of Legal Counsel provides the final word on legal advice for the U.S. Department of Justice and the federal executive departments and agencies.

Johnsen previously served as acting head of the Office of Legal Counsel. She is now an academic and has engaged in bitter sniping at Bush Administration lawyers. An example of this sniping follows:

With a handful of admirable exceptions, President Bush's lawyers have failed to

live up to these best practices where it has most mattered. They have not provided honest appraisals of the laws relevant to

the president's most controversial policies, at least none that have been made public. They have not publicly disclosed executive actions that violate federal statutes, forcing Congress and the public to rely upon leaks for essential information. Fn.1.

Johnsen has also reportedly been injecting herself into the hiring decision of the Office of

Legal Counsel, even though she has not been confirmed.

The controversial nomination of Dawn Johnsen to Office of Legal Counsel at the

"Statutes that curtail abortion choice are disturbingly suggestive of involuntary servitude, prohibited by the Thirteenth Amendment." Fn.3.

-Dawn Johnsen in a brief to the U.S. Supreme Court

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What you really need to know about Dawn Johnsen

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Department of Justice seems to be going nowhere. But from what I hear from reliable sources, Johnsen has been involving herself in OLC's decisions on hiring junior lawyers. If those reports are accurate, Johnsen's actions would seem a serious violation of the Senate's understanding of pre-confirmation etiquette—an etiquette that is especially punctilious for nominees who have generated controversy—and would give senators additional reason to oppose her nomination.] Fn.2.

Johnsen is also a fierce opponent of any restrictions on abortion. The organization Fidelis issued a report on Johnsen on April 2, 2009 detailing Johnsen's advocacy on this issue. They uncovered incredibly startling language used by Johnsen in a brief to the U.S. Supreme Court in *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989). Among Fidelis' findings are the following:

Johnsen made the following statements in that brief:

o "Statutes that curtail [a woman's] abortion choice are disturbingly suggestive of involuntary servitude, prohibited by the Thirteenth Amendment, in that forced pregnancy requires a woman to provide continuous physical service to the fetus in order to further the state's asserted interest."

o "Legal abortion remains safer than childbirth."

o A comparison of abortion restrictions to conscription: "She is constantly aware for nine months that her body is not wholly her own: the state has conscripted her body for its own ends." And restrictions "reduce pregnant women to no more than fetal containers."

o "By singling out only women to sacrifice their bodies and autonomy to protect the mere potentiality of life, abortion restrictions both reflect and reinforce the stereotype that breeding children is women's 'natural role.' And "requiring women to sacrifice their bodies and their liberty in ways that the state never demands of men, state laws manifest the stereotype that it is women's 'natural role' to bear children." Fn.3.

Sources for further reading:

Fn.1. Dawn Johnsen, *How should the president's lawyers advise a reluctant White House?*, SLATE, June 8, 2007. Available online at: <http://www.slate.com/id/2167985/pagenum/all/#p2>. (Accessed December 10, 2009.)

Fn.2. Ed Whelan, *OLC Nominee Dawn Johnsen and Pre-Confirmation Etiquette*, BENCH MEMOS BLOG, NATIONAL REVIEW ONLINE, October 23, 2009. Available online at: <http://bench.nationalreview.com/post/?q=ZWFIMDY3ODcxZGRkMmQzYmZjZjA2NGY1YTAyNmYzZTM=>. (Accessed December 10, 2009.)

Fn.3. *Research Brief of Dawn Johnsen, Nominee for the Office of Legal Counsel*, Fidelis, April 2, 2009. Available online at: http://www.scribd.com/full/13904433?access_key=key-115fniqczuv3xis8cl9b. (Accessed December 10, 2009.)

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