

KYL AGREES TO IG REFORM-BUT SUSTAINS DOJ LAWYER'S PROTECTION

POGO has a review of the Senate bill passed Wednesday that will strengthen the independence of the nation's Inspectors General. As it describes, John Kyl was able to water down some of the key provisions of the bill, but it does make some improvements. As someone who has struggled to find IG reports buried in DHS' and DOD's websites, for example, I'm particularly fond of this one:

All IG websites must be clearly and directly accessible from their agencies' home pages, and IG reports must be posted within 3 working days of release.

No longer can agencies hide bad news by making the IG reports inaccessible.

I'm particularly intrigued, however, by one of the provisions that Kyl struck from the bill—a move to give DOJ's IG authority to investigate the lawyers at DOJ.

Finally, Kyl's amendment did away with Justice Department Inspector General Glenn Fine's most cherished desire: that he be granted authority to investigate Justice lawyers accused of engaging in professional misconduct. Such allegations—as distinct from questions of fraud or abuse—are currently handled by the DOJ Office of Professional Responsibility (OPR), and Kyl, in a masterpiece of faint praise, announced that "there is no evidence that this Office's reviews are anything less than adequate."

I've done posts on this [here](#) and [here](#). The issue is important because, when Alberto Gonzales was attempting to spike any real investigation into the OLC authorization of the warrantless wiretap program and of the USA purge, he attempted to give OPR—and not OIG—the exclusive investigative authority. Recently, too, OIG had to refuse to investigate Yoo's torture memos because it doesn't have the mandate to conduct such investigations. As Glenn Fine explained the problem in testimony before the Senate:

Unlike all other OIGs throughout the federal government who can investigate misconduct within their entire agencies, the DOJ OIG does not have complete jurisdiction throughout the DOJ. Rather, the DOJ OIG can investigate misconduct throughout DOJ with one notable exception: the OIG does not have the authority to investigate allegations against DOJ attorneys acting in their capacity as lawyers – litigating, investigating, and providing legal advice – including such allegations against the Attorney General, Deputy Attorney General, and other senior Department lawyers. Instead, the DOJ Office of Professional Responsibility (OPR) has been assigned jurisdiction to investigate such allegations.

Effectively, in all other agencies, the agency lawyer can be investigated by the agency's OIG. But in DOJ—where the lawyers are inventing specious justifications for torture and domestic surveillance—they are protected from such an investigation. And John Kyl wants it to stay that way.

One more note. The bill also requires that each OIG relies on the advice of an independent legal counsel, rather than the General Counsel of that agency. But John Kyl limited that provision, too.

Sen. Kyl also clarified that although

IGs must seek advice from their own counsel, the agency's general counsel will remain the chief legal authority within the agency.

Consider what this means for the OIG investigation of CIA's interrogation methods, in which the John Helgerson determined that the interrogation methods used by the CIA amounted to cruel and in humane treatment. Once this bill becomes law, Helgerson will still be able to consult his own lawyers on the meaning of torture. But if CIA's General Counsel says that cruel and inhumane treatment isn't torture (relying, as it happened in fact, on an opinion written by a lawyer at DOJ's OLC, the process of which could not be investigated by the independent DOJ OIG), then the CIA's General Counsel's view holds sway.

See how Kyl's rollbacks work? The John Yoos and Steven Bradburys of the world remain immune from independent oversight at DOJ. And they can write opinions that the General Counsels of other agencies can use to tell their own IGs to fuck off.