

CALL FOR THE SENATE TO VOTE FOR PROCESS AT OLC-AND DAWN JOHNSEN

Update: Predictably, Arlen "Scottish Haggis" Specter put a one-week hold on Dawn Johnsen. Call Specter at (202) 224-4254 and tell him to stop obstructing Obama's nominees. It's time we cleaned up OLC and Specter's just ensuring the Cheneysque abuse of power will continue for a few more weeks.

In short time, the Office of Professional Responsibility will release a report on the abuses of John Yoo at OLC. The report will describe a process which Yoo used to "analyze" law that looks something like this:

1. David Addington calls Yoo and tells him what program Cheney wants to do—or has already started doing
2. An official request for a memo comes from Alberto Gonzales or Jim Haynes, presenting that desired program as a hypothetical—"what if we wanted to do X"—rather than the fait accompli Addington presented it as over phone or email
3. Yoo drafts a memo authorizing that program
4. Yoo eliminates or otherwise frivolously dismisses references to key precedents like Youngstown or Milligan

5. Yoo scours obscure documents—like insurance legislation or TV series—to find standards for torture and domestic surveillance that allows him to stretch the limits of legality well beyond belief
6. Yoo finalizes draft and sends it to Addington
7. Addington corrects it with a big red pen
8. Yoo makes Addington's final changes and distributes memo to about 3 people
9. All 3 people receiving the memo put it into a drawer, a briefcase, or a man-sized safe, to make sure those implementing this program will never see it
10. When Congress or the ACLU or some other do-gooder asks for a copy, tell them it's unclassified, but they still can't have it "so there"

Today, the Senate Judiciary Committee will finally consider Dawn Johnsen's nomination to head up OLC (it should be on the committee stream at 10—though she's the last thing on the agenda). You'll hear a lot of Republicans—Arlen "Scottish Haggis" Specter and Tom Coburn, among others—claiming that Dawn Johnsen is a radical who eats babies and loves terrorists.

But compare how Dawn Johnsen—that soon to be accused-baby eater—has promised to craft OLC memos to how we know Yoo did (what Johnsen calls the advocacy model).

1. When providing legal advice to guide contemplated executive branch action, OLC should provide an accurate and honest appraisal of applicable law, even if that advice will constrain the administration's pursuit of desired policies. The advocacy model of lawyering, in which lawyers craft merely plausible legal arguments to support their clients' desired actions, inadequately promotes the President's constitutional obligation to ensure the legality of executive action.

2. OLC's advice should be thorough and forthright, and it should reflect all legal constraints, including the constitutional authorities of the coordinate branches of the federal government—the courts and Congress—and constitutional limits on the exercise of governmental power.

3. OLC's obligation to counsel compliance with the law, and the insufficiency of the advocacy model, pertain with special force in circumstances where OLC's advice is unlikely to be subject to review by the courts.

4. OLC's legal analyses, and its processes for reaching legal determinations, should not simply mirror those of the federal courts, but also should reflect the institutional traditions and competencies of the executive branch as well as the views of the President who currently holds office.

5. OLC advice should reflect due respect for the constitutional views of the courts and Congress (as well as the President). On the very rare occasion when the executive branch—usually on the advice of OLC—declines fully to follow a federal statutory requirement, it

typically should publicly disclose its justification.

6. OLC should publicly disclose its written legal opinions in a timely manner, absent strong reasons for delay or nondisclosure.

7. OLC should maintain internal systems and practices to help ensure that OLC's legal advice is of the highest possible quality and represents the best possible view of the law.

8. Whenever time and circumstances permit, OLC should seek the views of all affected agencies and components of the Department of Justice before rendering final advice.

9. OLC should strive to maintain good working relationships with its client agencies, and especially the White House Counsel's Office, to help ensure that OLC is consulted, before the fact, regarding any and all substantial executive branch action of questionable legality.

10. OLC should be clear whenever it intends its advice to fall outside of OLC's typical role as the source of legal determinations that are binding within the executive branch.

In short, regardless of whether Jeff Sessions plans to accuse Johnsen of eating babies, she still intends to follow the law at OLC, rather than be a handmaiden of abuse of power like John Yoo was.

If you're lucky enough to have any of the following SJC Republicans as your Senator, call him and remind them of the difference:

Arlen Specter, (202) 224-4254

Orrin Hatch, (202) 224-5251

Chuck Grassley, (202) 224-3744

John Kyl, (202) 224-4521

Jeff Sessions, (202) 224-4124

Lindsey Graham, (202) 224-5972

John Cornyn, (202) 224-2934

Tom Coburn, (202) 224-5754