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The Obama Administration's Defiance of Inspectors General—A Faulty Opinion from the Justice Department

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Executive Summary

This Administration promised to be the most transparent White House in history. Yet, on July 20, 2015, after 14 months of delay, the U.S. Department of Justice (DOJ) released an opinion from its Office of Legal Counsel (OLC) that DOJ officers could withhold information at their discretion from the DOJ Inspector General (IG), the individual tasked with investigating them and other government officials.

This opinion authorizes DOJ officials to evade audits and investigation of possible misbehavior by claiming that information sought by an IG is protected under the non-disclosure provisions in the Federal Wiretap Act, the Federal Rules of Civil Procedure, and the Fair Credit Reporting Act. At its core, this opinion circumvents section 6(a)(1) of the Inspector General Act of 1978, which empowers the IG to access "all" information necessary for audits and investigations of their federal agency.

If the DOJ opinion stands, and these three statutes provide a permissible basis to withhold information from an IG, it may enable employees in the DOJ and other federal agencies to shield their operations from IG oversight under other federal statutes with a similar non-disclosure provision.

The OLC begins its analysis of those three statutes with a declaration: The IG Act "is not in all circumstances the only statute that governs OIG's access to Department materials." Although it is true that the DOJ must fully comply with all laws, not just the IG Act, the analysis that follows this declaration is contrary to the plain, straightforward text of the IG Act and the clear legislative intent of Congress in passing it. The opinion dismisses Congress's consistent

Key Points

- A recent opinion by the DOJ's Office of Legal Counsel would allow DOJ officials to evade audits and investigation of possible misbehavior.
- At its core, this opinion circumvents section 6(a)(1) of the Inspector General Act of 1978, which empowers the IG to access "all" information necessary for audits and investigations of their federal agency.
- It is not up to agencies to rewrite statutory policy when Congress could not be more clear in asserting that access to "all" records means all records.
- The Administration's re-write of major legislation runs afoul of the non-usurpation doctrine and undermines the IG's ability to conduct his investigatory duties, which costs taxpayers time, money, and trust in their government.
- Only by withdrawing the flawed OLC opinion or passing supplemental legislation can the original purpose of the IG Act and the intent of Congress be restored.

This paper, in its entirety, can be found at **http://report.heritage.org/lm169**

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reinforcement of its intent to provide IGs full access to agency information, including a 2015 Appropriations Act that Congress passed explicitly to forbid the DOJ from withholding records from the IG. The OLC opinion also advances its historic hostility to the IG Act.

It is not up to agencies to rewrite statutory policy when Congress could not be more clear in asserting that access to "all" records means all records. This administrative re-write of major legislation runs afoul of the non-usurpation doctrine and undermines the IG's ability to conduct his investigatory duties, which costs taxpayers time, money, and trust in their government.

Unless the DOJ withdraws this flawed OLC opinion, Congress must rectify the DOJ's faulty statutory interpretation. As stated by the Council of the Inspectors General on Integrity and Efficiency, any legislative solution must "affirm[] the authority of an Inspector General under IG Act Section 6(a) to access, independently and without delay, all information and data in an agency's possession that the Inspector General deems necessary to conduct its oversight functions."

Congress can correct the OLC's misreading of "all" in the IG Act by:

1. Writing into § 3(a) that the attorney general's role of "general supervision" over the IG does *not* include the power to restrict the disclosure of materials the IG requests or to otherwise interfere with IG investigations and audits except as stated in § 8(E);

2. Amending § 6(a)(1) to state that IGs are "to have access to all records...with respect to which that Inspector General has responsibilities under this Act, unless Congress explicitly denies the OIG access to specified documents"; or "notwithstanding any other law"; or

3. Passing separate legislation that states unambiguously that no law restricting access to information applies to IGs unless that law expressly states such a restriction.

Congress and the public both deserve the fullest information about the executive branch, its operations, and any fraud or abuses of its power and authority.

Introduction

The Obama White House promised to be the most transparent Administration in history.[1] Yet, on July 20, 2015, after 14 months of delay, the U.S. Department of Justice released an opinion that DOJ officers could withhold information at their discretion from the DOJ Inspector General (IG), the individuals tasked with investigating them and other government officials. To evade audits and investigation of possible misbehavior, DOJ officials need only claim that the information sought by an IG is protected by provisions of the Federal Wiretap Act, the Federal Rules of Civil Procedure, and the Fair Credit Reporting Act.[2] If the DOJ opinion stands, and these three statutes provide a permissible basis to withhold information, then this opinion will entitle DOJ employees, as well as the employees of other federal agencies, to shield their operations from IG oversight under any additional federal statutes with a similar non-disclosure provision.[3]

Authored by Karl R. Thompson, the Principal Deputy Assistant Attorney General of the Office of Legal Counsel (OLC), the opinion (OLC Op.) misreads those statutes as well as the federal law governing the authority of federal IGs and the intent of Congress in passing the Inspector General Act of 1978 (the IG Act or Act).[4] Neither the Justice Department nor any other federal agency has the authority to withhold information sought by an IG for the purposes of investigating fraud and abuse, conducting audits, or promoting economy and efficiency in the administration of government programs except under a very narrow exception within the IG statute itself that is applicable in only a very small number of specific cases.

The Purpose of the IG Act

In the late 1970s, Congress created the federal IG system to combat problems of "waste, fraud, and abuse within designated federal departments and agencies."[5] Section 2 of the IG Act makes clear that IGs serve several important functions:

- "[C]onduct and supervise audits and investigations" of federal agency programs and operations;
- Recommend policies "to promote economy, efficiency, and effectiveness";
- "[P]revent and detect fraud and abuse"; and

- Keep Congress and the heads of federal agencies "fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress of corrective action."

Then-President Jimmy Carter said the IGs would be "the most important new tools in the fight against fraud" and that "their ultimate responsibility is not to any individual but to the public interest."[6]

Only with independence and absolute access to information can the IGs fulfill their intended purpose. Therefore, Congress specified in § 6(a)(1) of the IG Act that the IGs "have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material available to the applicable establishment which relate to programs and operations with respect to which that Inspector General has responsibilities under this Act." Representative John Conyers (D–MI), the ranking Democrat on the House Judiciary Committee who voted for the 1978 Act, recently reaffirmed Congress's intent behind § 6(a)(1): "Congress, [meant] what it said in Section 6(a) of the act.... Simply put, the inspector general is to have complete and direct access to all of the information he or she deems necessary to conduct thorough and impartial investigations," notwithstanding any other law.[7]

Congress reinforced § 6(a)(1) to ensure "the independence of the [IG] by making him a Presidential appointee, subject to senate confirmation, and by taking the unusual step of requiring the President to report to Congress explaining his reasons for removing an incumbent of the office. Additionally, the [IG] derives independence from the fact that the agency head can add his comments to the semi-annual report of the [IG] but cannot generally prevent it from going to Congress or change its contents."[8]

In fact, under § 3 of the Act, neither an agency head "nor the officer next in rank below such head shall prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation, or from issuing any subpoena during the course of any audit or investigation."[9]

Further evidence of congressional intent regarding the independence and authority of the IGs is the fact that, in addition to the semiannual reports to Congress and the heads of agencies, IGs are obligated by § 4 to "report expeditiously to the Attorney General whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law."[10] This is obviously intended to bring criminal violations to the attention of the AG so he or she can act immediately.

Section § 5(d) mandates immediate notification to agency heads of "particularly serious or flagrant problems, abuses, or deficiencies," as well as notification by the agency head of such problems to Congress within seven days. Clearly, Congress wants to know as soon as possible of serious problems within the executive branch.

The only exception to the requirement that "all" information be furnished to IGs is in § 8E, which gives the attorney general limited authority to halt an IG investigation under very restricted circumstances. Specifically, if an IG seeks "sensitive information" concerning an ongoing civil or criminal investigation, an undercover operation, the identity of a confidential source, intelligence matters, or any other matter "the disclosure of which would constitute a serious threat to national security," the attorney general (AG) can then "prohibit" the IG from carrying out or completing the audit or investigation, or from issuing a subpoena.

However, the AG can only do so if he or she determines that "such prohibition is necessary to prevent the disclosure" of such information or "to prevent the significant impairment to the national interests of the United States." Furthermore, if the AG makes such a determination, then § 8E(a)(3) requires the AG to notify the IG in writing of "the reasons" the investigation was halted. Within 30 days of receiving that notice, the IG must file a copy with the Senate committees on Governmental Affairs and the Judiciary and the House committees on Government Operations and the Judiciary.

There is "only one instance in which an Attorney General exercised her authority under Section 8E(a) of the Inspector General Act...to delay the public release of an IG report concerning allegations that U.S. government officials ignored or protected drug dealers in Southern California who were associated with the Nicaraguan Contras. The Attorney General at the time ordered the delay in order to protect a DEA informant and ongoing DEA investigation."[11]

This exception is largely irrelevant to the instant OLC argument, which is based on a congressional conference agreement that struck access language from the Act.[12] Furthermore, this language was struck not because Congress wanted the DOJ to

withhold information from the IG, but because Congress found it redundant and "unnecessary" in light of the word "all" that is provided in § 6(a)(1).[13]

Congressional Reinforcement of the IG Act and the 2015 Appropriations Act

Congress and prior Presidents have consistently reinforced IG independence and autonomy through, among other things, the following initiatives:

1. Creating new IGs and additional federal agencies;[14]
2. "Expanding the authority of existing [IGs]";[15]
3. Establishing the Council of the Inspectors General for Integrity and Efficiency;[16] and
4. "Increasing IG's reporting requirements to Congress."[17]

Congress was so concerned that the Justice Department understands that it has a legal obligation to provide the DOJ IG with whatever information and documents he requests when conducting an investigation or an audit, that it inserted a special provision into the Justice Department's fiscal year (FY) 2015 Appropriations Act. In § 218, the law states that:

> No funds shall be used to deny the Inspector General of the Department of Justice timely access to all records, documents, and other materials in the custody or possession of the Department or to prevent or impede the Inspector General's access to such records, documents and other materials, unless in accordance with an express limitation of section 6(a) of the Inspector General Act, as amended, *consistent with the plain language* of the Inspector General Act, as amended.[18]

Indeed, Congress passed § 218 to forbid the DOJ from withholding records from the OIG.[19]

The Obama Administration Starts to Limit IG Access

According to DOJ Inspector General Michael Horowitz, the IG community had no problem gaining access to all requested materials, including from the Federal Bureau of Investigation (FBI), until a 2010 IG probe of the FBI: "No law changed, no policy changed.... It was simply a decision by the General Counsel's Office [of the FBI] in 2010 that they [now viewed] the law differently. And as a result, they weren't going to give us [certain] information."[20]

Horowitz was perplexed by this move, since prior to 2010, the "DOJ never questioned our legal authority to access documents."[21] No attorney general even exercised the "national security" exemption, since Horowitz points out that his office was provided with very sensitive intelligence information when the IG investigated "the Robert Hanssen matter, the Aldrich Ames matter, the September 11 attacks, the post-September 11 surveillance program initiated by President Bush, and the FBI's use of its authorities under the Patriot Act and the FISA Amendments Act."[22]

However, beginning in 2010 and 2011, lawyers inside the FBI, without objection by the Justice Department,[23] "opined that the DOJ-OIG should not have access to certain categories of information, namely grand jury, wiretap, and credit information" pursuant to:

1. Rule 6(e) of the Federal Rules of Criminal Procedure, which governs the secrecy of grand jury materials;
2. The Federal Wiretap Act, Title III of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 18 U.S.C. §§ 2510-2522 ("Title III"); which provides the rules on intercepted wire communications; and
3. Section 626 of the Fair Credit Reporting Act, 15 U.S.C. § 1681u ("FCRA"), which limits the authority of the FBI to disclose consumer information obtained pursuant to National Security Letters.

Since the Office of Legal Counsel issued its July 20 opinion limiting IG access under these three provisions, Horowitz testified that the FBI has identified at least 10 other categories of information it may not produce because of supposed restrictions in other federal laws, including "FISA information, Attorney-Client Information, Patient Medical Information, Bank Secrecy Act Information, Federal Juvenile Court Records, Information Subject to Non-Disclosure Agreements and Memoranda of Understanding, and Source Information."[24] Under

the OLC Op., the only limit on DOJ officers' ability to cherry-pick nondisclosure provisions from the numerous federal statutes in the U.S. Code in order to justify withholding information from the IGs is their creativity in interpreting those many statutes.

The Office of Legal Counsel Opinion on IG Access

Due to complaints by both the IG community and Congress, the deputy attorney general of the Justice Department asked the Office of Legal Counsel to provide an opinion on the legal objections raised by the FBI to providing the DOJ IG with access to grand jury, wiretap, and credit information.[25]

On July 20, 2015, the OLC published its 58-page opinion. It states that the FBI's withholding of information is lawful, and that these three statutes do not "authorize Department officials to disclose protected information to OIG in connection with all of OIG's activities."[26] Instead, the OLC Op. narrows who may receive what information, from whom, and when, according to its own discretionary interpretation of the law.

The OLC Op. reflects an historic, structural frustration and disdain toward the IG,[27] and runs afoul of the statute that created the inspectors general system. Unfortunately, according to one commentator, "because of the kind of work they do, Inspectors General are disliked and distrusted by the managers of their agencies, a circumstance which would make it difficult for them to form the cooperative and collegial working relationships necessary to effectively implement proactive changes."[28]

Indeed, in 1977 the OLC wrote of the OIG that "the Justice Department has repeatedly taken the position that continuous oversight of the functioning of executive agencies, such as that contemplated by the requirement that the Inspector General keep Congress fully and currently informed, is not a proper legislative function" and "such continuing supervision amounts to an assumption of the Executive's role of administering or executing the laws."[29] The OLC suggested, "The only means by which this bill could be rendered constitutional would be to modify it so as clearly to establish the Inspector General as an executive officer subject to the supervision of the agency head and subject to the ultimate control of the Chief Executive Officer."[30] And unlike judges, agencies are likely to "to allow personal bias or self-interest to distort their reading of the enactor's intent."[31]

In the 2015 OLC Op., the OLC interprets the IG Act in a manner consistent with its historic hostility, which is specifically in conflict with § 6(a)(1). That provision grants IGs access to "all" information they deem necessary, in their sole discretion, to complete their audits and investigations. In a recent statement, Representative Robert Goodlatte (R–VA), chairman of the House Judiciary Committee, reiterated Congress's stance on why this is so problematic: "Restricting or delaying an Inspector General's access to key materials...deprives Congress and the American people of timely information with which to evaluate an agency's performance. Limiting access, except in very narrow instances, is at odds with the necessary independence of Inspectors General and is contrary to congressional intent."[32]

Indeed, as Peace Corps Inspector General Kathy A. Buller stated: "[The] opinion is an invitation for agencies to unilaterally decide when they can or cannot release information to the IG. Such a result not only undermines IG independence and effective oversight but presents a clear conflict of interest. This decision in many ways guarantees IGs will be forced to spend time and taxpayer resources wrangling with their agency to obtain information they are entitled to under the Inspector General's Act of 1978."[33]

The OLC Opinion Violates the Standard Statutory Interpretation Process. The Supreme Court has established a general, straightforward sequence to the statutory interpretation process, as a guide to anyone ascertaining the meaning of a statute.[34] The OLC Op., however, blatantly disregards the rules of statuary interpretation, which state that the text of a statute is read for its plain meaning.[35] Terms that are not defined within the statute are given their dictionary meaning.[36] If the language of the statute by itself does not resolve uncertainty about its meaning, one then examines the context of the statutory provision, its role in the statutory scheme, and its relation to the problem and policies that Congress sought to address.[37] One tradition of interpretation purports to end the analysis here.[38] Alternatively, interpreters look into the statute's legislative history to divine Congress's intent.[39]

At each step in this sequence, § 6(a)(1), the crucial section of the Act applicable to this issue, remains clear: the IG is entitled to review all records relevant to its investigations and other responsibilities except as limited by the Act or an explicit congressional prohibition that prevents access by an IG.[40]

First, the Act does not define the word "all." Its dictionary definition reads: "the whole, entire, total amount, quantity, or extent of; every member or part of; the whole number or sum of."[41] Congress's use of such a definite, unqualified term trumps any DOJ claim that it may withhold information from the IG.[42] Indeed, had Congress sought to so empower the DOJ, it need only have used in § 6(a)(1) an indefinite article like "some" or "a" instead of "all."[43]

Second, the statutory context of section (6)(a)(1) supports such an interpretation. The IG has access to all records, etc., "which relate to programs and operations with respect to which that Inspector General has responsibilities under this Act."[44] The Act bestows broad responsibilities on the IG "to conduct, supervise, and coordinate" "audits and investigations" related to DOJ "programs and operations";[45] to recommend policies for the DOJ; and to "supervise or coordinate other activities carried out or financed by [the DOJ] for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations."[46]

These responsibilities reach all DOJ programs and operations, and thus these cannot be read to diminish IG access to all records. Rather, the breadth Congress employs indicates that all does, in fact, mean all. These responsibilities are qualified only by section 8, which subordinates IG access to national security interests and similarly sensitive but limited topics.[47] Congress made an IG's request for information under section 6(a)(3) of the Act subject to "existing statutory restriction[s]," and the absence of such language in section 6(a)(1) further shows Congress's unqualified use of "all" was deliberate.

Third, section 6(a)(1) is crucial to the broad policies of the Act, by which Congress sought to combat problems of waste, fraud, and abuse within executive agencies. Such policies would obviously include how the FBI and the Justice Department handle criminal enforcement involving grand-jury matters, wiretap communications, and credit information.[48]

By equipping the IG with the information necessary to complete his tasks, Section 6(a)(1) is the IG's primary means of executing his statutory responsibilities.[49] The problems that Congress identified could arise with respect to DOJ conduct in connection with any investigation, even in the way the DOJ handles confidential, "private" information. If the DOJ exhibits waste, fraud, or abuse when it handles individuals' confidential information, it is the IG's duty to investigate that conduct. The OLC Op. will hinder the execution of that duty.

Finally, the Act's legislative history reveals a strong intent to ensure independence and complete access to records in IG audits and investigations.[50] The history made clear that while an Inspector General "reports to, and is under the general supervision of, the head of [their] agency," the IG's access to records remained virtually absolute.[51] The Senate Governmental Affairs Committee echoed that intention in its 1978 report:

> The [IG] is given the authority to have access to *all* records, reports, documents, or materials available to the agency relating to programs over which the [IG] has responsibility; to make *all* investigations and reports relating to programs that he judges necessary; and to require by subpoena the production of information, documents and reports necessary in the performance of the functions of this Act.[52]

Then-President Jimmy Carter made clear his wish and intention that IGs were to be "the most important new tools in the fight against fraud," and to ensure that "their ultimate responsibility is not to any individual but to the public interest."[53]

This history reveals that the IG was not created simply to be an assistant to the Attorney General, which is how the OLC Op. portrays him.[54] Indeed, the IG's statutory responsibilities cannot properly be read as the OLC Op. reads them: duties executed in assistance to the Attorney General.[55] This self-serving re-characterization of the IG's functions is repeated throughout the OLC Op.[56]

Legislators have consistently and explicitly expressed that restrictions on IG access to information are unwelcome, unnecessary, and harmful, insofar as they prevent IGs from fulfilling their mission.[57]

The OLC Op. bases its interpretation of the legislative history on the mistaken belief that "when Congress extended the Act's provisions to the Department [of Justice] in 1988, Congress limited OIG's authority to investigate matters involving certain kinds of information, in recognition of the sensitivity of much of the Department's work."[58] That claim is based on language in a congressional conference agreement that eliminated an access-granting

provision of the Act because it was redundant and "unnecessary" in light of the word "all," not because Congress wanted the DOJ to withhold information from the IG.[59] In fact, Congress has demonstrated before that it stands ready, on a bipartisan basis, to remedy apparent deficiencies in IG oversight jurisdiction.[60]

In recent congressional testimony, Representative John Conyers (D–MI) —the ranking Democrat on the House Judiciary Committee, who voted for the 1978 Act—reaffirmed that position: "Congress meant what it said in Section 6(a) of the act."[61] According to Conyers, "Simply put, the inspector general is to have complete and direct access, emphasized, to all of the information he or she deems necessary to conduct thorough and impartial investigations"; and "nothing in the Inspector General Act authorizes the department or its component agencies to refuse... materials to the Inspector General."[62] Congress passed § 218 of the Department of Justice's FY 2015 Appropriations Act to explicitly forbid the DOJ from withholding records from the OIG.[63]

However, the OLC Op. construes the Act to undermine the IG's independence and diminish his ability to perform his statutory responsibilities.[64] OLC focuses on terms within the Act like "control" and "reporting," rather than the more relevant terms: "access," and "all."[65] But OLC is not primarily engaged in interpreting the Act—if it were, its results would be "unsupportable."[66] Rather, the OLC Op. adopts prior DOJ interpretations of other statutes as conflicting with and superseding § 6(a)(1) of the IG Act.[67]

In *Watt v. Alaska*,[68] the Supreme Court acknowledged a "maxim of construction that the more recent of two irreconcilably conflicting statutes governs."[69] To find that a conflict between two statutes exists, however, the two texts must be found "irreconcilable" according to "the actual intent of Congress."[70] "The intention of the legislature to repeal must be 'clear and manifest.'"[71] Even then, the Court will "read the statutes to give effect to each if [it] can do so while preserving their sense and purpose."[72]

As Representative Goodlatte stated: "Limiting access, except in very narrow instances, is at odds with the necessary independence of inspectors general and is contrary to congressional intent."[73] The OLC provides no convincing reasons why a court would be unable to respect both the privacy concerns it relies upon in Title III, Rule 6(e), and Section 626, as well as section 6(a)(1) of the IG Act.

The Specifics of the OLC Opinion

OLC begins its analysis with a declaration: The IG Act "is not in all circumstances the only statute that governs OIG's access to Department materials."[74] This claim is certainly credible since the DOJ must comply with all laws—not just the IG Act. But what follows this declaration is contrary to all legislative intent; so much so that at an August 5th hearing in the Senate, the OLC Op. was referred to by Senator Charles Grassley (R–IA) as "fifty-eight pages of tortured logic."[75]

The OLC analysis illustrates an institutional perspective toward the IG that appears to reflect some degree of residual structural tension, resentment, or resistance.[76] This perspective colors the OLC opinion at a time when the Obama White House promised to be the most transparent Administration in history.[77] Accordingly, it is the manner in which the OLC Op. reaches its conclusions, even more than the conclusions themselves, which reveals that if departmental withholding practices are not checked, they will likely increase.

The OLC analysis is built on several flawed premises. First, the OLC declares that the "duty to cooperate with OIG investigations," while "an official duty in the broadest sense of that term," is a qualified duty.[78] And the qualifications limiting that duty may be raised by officials within the DOJ, against the IG, at the DOJ's discretion.

Second, the OLC opinion operates on the premise that the IG's investigative powers are absolute only within DOJ-approved boundaries, when rendered in authorized assistance to some specific DOJ action. The opinion relies heavily on the Act's placement of the IG under the supervision of the Attorney General, while ignoring the statutory limitations on that supervision as well as the legislative history that makes it clear that the IG is meant to remain independent.

Third, the OLC derives the vast majority of support for its arguments from earlier OLC opinions, creating one long *ipse dixit* argument. It uses these opinions in *stare decisis* fashion to set parameters on the IG.[79] One would think that if the IG is to retain independence and the separation of powers is to be meaningfully observed, agency opinions that deplete OIG powers should not merit the same power as opinions of an Article III judge, or at the least not be an exclusive source of power to nullify an act of Congress.

Title III. In reading Title III, the OLC Op. fairly characterizes 18 U.S. Code §§ 2510–2522 as a "comprehensive statutory scheme governing the interception, use, and disclosure of wire, oral, and electronic communications,...establishing a mechanism through which law enforcement officials could conduct electronic surveillance in a manner that met the [developing] constitutional requirements [as] enunciated [by the Supreme Court]."[80] However, the opinion fabricates a conflict with the IG Act without first making the requisite showing that it is "in irreconcilable conflict" with the IG Act, or that Title III "covers the whole subject of [the IG Act] and is clearly intended as a substitute."[81]

Instead, the OLC opinion merely asserts that "interpreting Title III to impair programmatic or policy supervision of the use of Title III authorities and materials would undermine Congress's goal of protecting privacy to the maximum extent possible."[82] This approach disregards the competing purposes of the IG Act—for the IG to investigate DOJ operations, including whether the DOJ is adequately protecting privacy interests—which are necessarily overriding because Congress never authorized the DOJ to choose areas over which it could not be investigated. Whatever privacy concerns the DOJ may earnestly have ought to be assuaged by the OIG's track record: In 27 years, the OIG has never misused private information protected by the three statutes in the OLC opinion.[83]

In fact, Title III specifically authorizes law enforcement officials who have received intercepted wire communications to disclose that information "to another investigative or law enforcement officer to the extent that such disclosure is appropriate to the proper performance of the official duties of the officer making or *receiving the disclosure*."[84] It seems obvious that the IG and his subordinates are "investigative officers" within the meaning of this provision, a fact that the OLC actually acknowledged in a 1990 opinion.[85] And it also seems obvious that disclosures to the IG in connection with an audit or investigation are "appropriate to the proper performance of the official duties" of the IG.

Instead, the OLC Op. uses Title III to layer restrictions on IG access by unilaterally defining (1) permissible disclosures of Title III communications defined by content;[86] (2) persons authorized to receive disclosures;[87] (3) persons authorized to issue disclosures; and (4) instances when disclosure is authorized generally. The OLC builds on its own groundwork to conclude that "higher-ranking department officials" may disclose Title III materials to the IG "for the purpose of obtaining assistance" in executing "that official's duty to supervise law enforcement activities on a programmatic or policy basis";[88] and "line-level Department officers may disclose Title III information to OIG agents to assist the disclosing officers in preventing, investigating, or prosecuting criminal conduct."[89]

The OLC could only arrive at this opinion through three steps: fabricating a conflict with and then ignoring the IG Act, manipulating key terms in Title III, and re-characterizing the IG as only an assistant with different job duties to both higher and lower ranking department officials. This approach not only continues the DOJ's 35-year hostility toward the IG, but does so in a way that is easily replicated with other statutes against future IG records requests.

Rule 6(e). The OLC Op. uses the other two statutes in similar fashion. In reading Rule 6(e), the OLC again characterizes the rule as "codifying the traditional rule of grand jury secrecy" to foster "full and frank" testimony;[90] in part by prohibiting certain individuals, including government attorneys, from disclosing "a matter before the grand jury" unless they come under a statutory exception.[91] The OLC does not assess whether this statute "irreconcilably conflicts" with the IG Act, or whether the mandatory disclosure that § 6(a)(1) of the IG Act requires overrides Rule 6(e). It should, under a plain text analysis, absent Congress's explicit and specific overriding intent. But the OLC simply advances a statute that generally prohibits disclosure of certain information, and proceeds to say why the IG does not qualify under that statute's exceptions for permissive disclosure. Again, this pattern dangerously erodes IG oversight.

Because OIG attorneys are authorized to supervise the DOJ, they should qualify under Rule 6(e)'s first exception: Rule 6(e)(3)(A)(i) permits "disclosure of a grand jury matter...[to] an attorney for the government for use in performing that attorney's duty," without court authorization or notification. The OLC previously decided that Office of Professional Responsibility (OPR) attorneys were automatically entitled to disclosures under this provision.[92] But the OLC asserts that to receive disclosures under Rule 6(e), an attorney must both "assist the Attorney General" and "be capable of conducting criminal proceedings on behalf of the government."[93] According to the OLC, the IG satisfies neither standard.

The OLC reached this conclusion based on *United States v. Sells Engineering, Inc.*, a Supreme Court decision which approved certain limitations on the disclosure of grand-jury materials,[94] but which was issued six years before Congress created the DOJ IG. The IG and his investigations are simply not the type of entity or activity about which the Court, or Congress in drafting the relevant parts of Rule 6(e), was writing.[95] It is unsurprising then, that although the OLC's analysis of *Sells* describes limits on DOJ attorneys' access to grand-jury testimony, the OLC extends these limits to the IG by analogy—not the explicit edict of a court regarding textual or policy limitations on DOJ IG access to records.[96]

In *Sells*, the Court ruled that before a disclosure of grand-jury material will be permitted "to public parties as well as private ones, [even] when government officials seek access in furtherance of their responsibility to protect the public weal," the movant must make a "strong showing of particularized need for [the] grand jury materials."[97] This decision might be said to limit IG access to grand-jury material if it were all the Court had to say on the matter. However, the Court continued: This "standard is a highly flexible one, adaptable to different circumstances and sensitive to the fact that the requirements of secrecy are greater in some situations than in others."[98] The Court held that under Rule 6(e), "disclosure is limited to use by those attorneys who conduct the criminal matters to which the materials pertain," but that was only "mandated by the general purposes and policies of grand jury secrecy, by the limited policy reasons why government attorneys are granted access to grand jury materials for criminal use, and by the legislative history of Rule 6(e)."[99] The Court was aware that other policy considerations might counsel in favor of broader access, and envisioned that later statutory schemes might broaden an agency officer's access to these grand-jury materials.[100]

The dissenters in *Sells* recognized that the statute's plain language authorized "disclosure...of matters occurring before the grand jury, other than its deliberations and the vote of any grand juror,...to... an attorney for the government for use in the performance of such attorney's duty."[101] Furthermore, the dissent recognizes that history compelled "the conclusion that government attorneys, are entitled to grand jury materials in pursuing civil matters, regardless of whether they themselves were assigned to the grand jury investigation or prosecution."[102]

In fact, Congress created an Office of the Inspector General to oversee the DOJ six years after *Sells*. It did so with the new discovery tool of section 6(a)(1) and new priorities: "to detect and deter waste, fraud, abuse, and misconduct in DOJ programs and personnel, and to promote economy and efficiency in those programs."[103] In interpreting Rule 6(e), the OLC discusses the IG Act, noting that it does not authorize the IG to conduct criminal proceedings, and the Attorney General cannot authorize them to either.[104] This conclusion, while probably true, is irrelevant to the ability of the IG to receive grand-jury information that is related to, and necessary for, an IG authorized investigation or audit.

In the OLC's view, the IG is also not an "authorized assistant" to the Attorney General or a United States attorney,[105] which limits the IG's ability to receive grand-jury information—even though the DOJ characterizes the IG as an assistant throughout the opinion. The OLC resorts to the text of the Federal Rules of Criminal Procedure, *Sells*, and circuit court cases that define "authorized assistant" as applied to other DOJ attorneys, but not to the IG. This apples-and-oranges analysis only illustrates the notion that if an agency seizes *carte blanche* authority to re-write the law, obviously it will obtain the result it desires.[106]

Proving the inconsistency of its analysis, the OLC once again believes the IG is an "assistant" for purposes of the IG's entitlement to disclosures under exception (A)(ii). The OLC Op. allows disclosure insofar as the IG acts to "assist" a DOJ officer, when that officer believes that assistance is necessary.[107] The OLC made sure to retain absolute discretion for (A)(ii) disclosures by adding: "As in the Title III context,...we do not think that [this] exception...would permit Department attorneys to disclose grand jury material to OIG in relation to *all* OIG audits, investigations, and reviews"; only those that a DOJ attorney approves.[108] This directly violates § 3(a) of the IG Act, which states that no one in an agency can "prevent or prohibit" the IG from carrying out an investigation or audit. Limiting disclosure to only those instances when a DOJ attorney approves of an IG investigation obviously will "prevent or prohibit" investigations.

The OLC analysis also dismisses the fact, as pointed out by the DOJ OIG, that "multiple district court decisions have determined that OIG attorneys qualify for disclosure under exception (A)(1)."[109] For example, a district court in Oklahoma granted the IG access to grand jury materials because the IG's

investigation of alleged misconduct "is supervisory in nature with respect to the ethical conduct of [Justice] Department employees."[110] Thus, "disclosure of grand jury materials to the OIG constitutes disclosure to 'an attorney for the government for use in the performance of such attorney's duty[.]'"[111] The OLC Op. says that it can simply disregard these district court decisions because it has "independently" analyzed the "questions presented" and reached a contrary conclusion.[112]

As the Oklahoma case makes clear, it makes no sense for OLC to treat lawyers for the OPR and lawyers for the OIG differently in terms of their access to grand-jury materials. Both the OPR and the OIG "perform identical functions within the scope of their respective jurisdictions. Like OPR attorneys conducting oversight of Department attorneys in their use of the grand jury to perform their litigating function, OIG attorneys are part of the supervisory chain conducting oversight of the conduct of law enforcement officials assisting the grand jury."[113]

Section 626. Lastly, the OLC reads Section 626 of the Fair Credit Reporting Act (FCRA), 15 U.S. Code § 1681(u), to withhold consumer credit information from the IG. Again, the OLC cites the statute's purpose—"comprehensively regulat[ing] the confidentiality, accuracy, relevancy, and proper utilization of [certain] information held by consumer credit reporting agencies"—without explaining how this presents an "irreconcilable conflict" with the IG Act.[114] It also fails again to explain why "all" does not mean all for this subject matter.

Under § 626, the FBI can get credit information on an individual "for the conduct of an authorized investigation to protect against international terrorism or clandestine intelligence activities" by sending a written request to a credit agency (a National Security Letter); but the FBI is not allowed to disseminate this information outside the FBI except to other federal agencies "as may be necessary for the approval or conduct of a foreign counterintelligence operation."[115]

The opinion recounts the IG's argument that the IG is exempt from the disclosure limitation because it is part of the same federal agency as the FBI. Further, the OLC admits that the IG "is permitted to obtain section 626 information from the FBI in connection with any of its audits, investigations, or reviews,"[116] but then says nothing more of the IG Act. The OLC Op. agrees with the IG's argument under § 626[117] that the statute was "intended to protect consumer privacy" and that "it would undermine rather than further that purpose to prohibit OIG from obtaining the information necessary to determine whether the FBI is abiding by section 626's requirements"[118] when it issues National Security Letters.

Still, the OLC places familiar limits on § 626 disclosures to the IG, claiming that it is up to the DOJ—not the IG—to determine whether an IG-initiated investigation is "necessary to facilitate approval of a particular foreign counterintelligence investigation, or to obtain assistance in conducting such an investigation," or "necessary for the programmatic and policy supervision of foreign counterintelligence investigations generally."[119] In essence, the OLC claims that the DOJ can decide, at its discretion, whether disclosure of information about National Security Letters will be of assistance to the DOJ.[120] Such a unilateral approach clearly violates the IG Act, which does not give the DOJ such discretion.

OLC's Overall Faulty Approach to its Analysis

Each statutory reading by OLC is justifiable only by judicious selection and misapplication of two canons of statutory construction: the clear statement rule and the rule of relative specificity. While the OLC application of these canons is an unavoidable part of its function to advise the executive on legal matters,[121] the OLC proves the principle that "judges are less likely than agencies to allow personal bias or self-interest to distort their reading of the enactor's intent."[122] Institutional bias colors the OLC's statutory construction. That construction certainly differs markedly from both the IG and a bipartisan group of Congressmen, casting doubt on whether the OLC's interpretation should prevail.[123]

The OLC opinion runs counter to clear congressional intent in another way: "Congress did not intend to create litigation style stand-offs within the Department of Justice."[124] The IG Act in §§ 3(a), 6(a), 8, and elsewhere, reflects a clear balance between respect for the sensitivity of the Department of Justice's work, and the vital importance of the IG to the public, the legislative branch, and the executive branch. The OLC exists to "advise the President of law and, in so doing, protect the rule of law within the Executive Branch; it is not the role of the OLC to prevail in policy disputes that might entail the law."[125]

The OLC Op. notes that the Supreme Court will decline "to infer that Congress intended to override statutory limits on the disclosure of highly sensitive information about which Congress has expressed a special concern for privacy, absent a clear statement of congressional intent to that effect."[126] Relying on this "clear statement rule," the OLC opinion discusses broad policies behind each statute—Rule 6(e), Title III, and section 626—but never provides a clear statement from Congress that these provisions override § 6(a)(1) of the IG Act.[127] Instead, the OLC claims there is no clear statement in the IG Act that Congress intended it to override these specific disclosure prohibitions.[128]

But Congress has repeatedly said that § 6(a)(1) of the IG Act *is* a plain expression of its intent that "all" means all in relation to access to records, reports, audits, reviews, documents, papers, recommendations, or other material.[129] Contrast this with a limitation in § 6(b)(1) which specifies that when an IG requests "information or assistance as may be necessary for carrying out the duties and responsibilities provided by this Act from any Federal, State, or local governmental agency or unit thereof," the agency must provide that information and assistance to the extent it "is practicable and not in contravention of any existing statutory restriction or regulation of the Federal agency from which the information is requested." Congress could just as easily have placed the same type of limit on an IG's access to records, reports, etc., in 6(a)(1) if it wanted to do so.[130] It did not.

And the legislative history has consistently supported the clear statement that "all" means all since 1977.[131] The OLC further argues that if Congress wanted a particular non-disclosure provision to not apply to the IG Act, it must make that clear in the IG Act. But that would force Congress to seek out every nondisclosure provision in the U.S. Code, and write out that each one does not apply—a Herculean, impractical task that no agency can reasonably expect Congress to complete. It is also unnecessary, since Congress made its intention clear through its use of the word "all" in defining the plenary access to sensitive material that it meant the IG to have in order to fulfill his important statutory duties.

Another example of the OLC's tortured reading of congressional intent is its analysis of Congress's appropriations rider for FY 2015,[132] which was meant to reaffirm IG access by denying to the DOJ the use of any funds "to deny the [IG] of the [DOJ] timely access to all records, documents, and other materials in the custody or possession of the Department or to prevent or impede the [IG]'s access to such [material]" unless so directed by the IG Act itself. The OLC acknowledged that this might mean the IG access to "all" records is absolute, unless the IG Act or Congress explicitly provides otherwise, but claimed this appropriations rider was too "ambiguous."[133] The OLC deliberately made it "ambiguous" by providing three equally implausible interpretations of the rider, solely to justify its claim that the IG's interpretation "was not compelled by the text."[134]

Adopting "the rule of relative specificity," the OLC advances an *ipse dixit* argument that "the nondisclosure provisions in Title III, Rule 6(e), and section 626 should prevail over the general right of access contained in section 6(a)(1) absent a clear indication of congressional intent to the contrary."[135] The OLC opinion makes the same mistakes here: Congress wrote "all" into § 6(a)(1) as just such a clear statement, and the broad privacy considerations described by the OLC in the competing statutes are not themselves clear statements that Congress intended to override the IG Act.

The OLC gets the purpose of these rules backward. "Through the statute-based clear statement rules, the Court updates and harmonizes statutory policy based upon evolving legislative and judicial developments."[136] It is not up to agencies to rewrite the progression of statutory policy when Congress could not be more clear in asserting—that "all" means all. Here, Congress has not said otherwise with regard to the IG Act; only the DOJ Office of Legal Counsel has. This administrative re-write of major legislation runs afoul of the non-usurpation doctrine[137] and undermines the IG's ability to conduct his investigatory duties, which costs taxpayer time, money, and trust.[138]

Proposed Solutions

The OLC Op. thwarts Congress's clear intent in passing the IG Act—intent which was made clear in 1977 and every time the issue has been considered since then. The OLC can, and should, withdraw its opinion and return the DOJ and other federal agencies to their former practice of providing IGs access to all agency information and documentation.[139]

Unfortunately, it is unlikely this will occur, particularly given the fact that the OLC refused to send a representative to an August 5, 2015, Senate Judiciary Committee hearing to explain the OLC's opinion, as well as the apparent aversion of the DOJ to an IG with robust independent investigatory authority.[140] Indeed, the OLC's present resistance to IG oversight is in line with its insistence, since 1977, that IG oversight is unconstitutional.[141]

Certain intra-agency remedial policies are also not likely to be effective in countering the OLC Op.[142] Such policies include "providing IGs with explicit, unrestricted read-only access to agency information systems...[to] remove [any] roadblock to effective oversight of agency programs";[143] not "tipping off" the targets of investigations to prevent "destruction of evidence, intimidation of witnesses, or flight";[144] and increasing IG access to government contractors.[145] Each such approach would increase the quantity and accessibility of pertinent material. Agencies should not worry about the extensive scope of OIG access because the OIG system was designed to maintain objective, apolitical investigations.[146] As IG Horowitz testified, in 27 years his office has had no incident of misuse of private or "confidential" information. Even if implemented, however, these policies will not suffice to counteract the obstruction that results from DOJ attorneys seizing upon statutory nondisclosure provisions as a basis for shielding the conduct, and potential misconduct, of DOJ staff from IG oversights.

Absent corrective action by the DOJ, Congress must rectify the DOJ's faulty statutory interpretation.[147] As stated by the Council of the Inspectors General on Integrity and Efficiency (CIGIE), any legislative solution must "affirm[] the authority of an Inspector General under IG Act Section 6(a) to access, independently and without delay, all information and data in an agency's possession that the Inspector General deems necessary to conduct its oversight functions."[148]

Congress can correct the OLC's misreading of "all" in several ways:

1. Write into § 3(a) that the attorney general's role of "general supervision" over the IG does *not* include the power to restrict the disclosure of materials the IG requests or to otherwise interfere with IG investigations and audits except as stated in § 8(E);

2. Amend § 6(a)(1) to state that IGs are "to have access to all records...with respect to which that Inspector General has responsibilities under this Act, *unless Congress explicitly denies the OIG access to specified documents*";[149] or "*notwithstanding any other law*";[150] or

3. Adopt the CIGIE's recommendation to pass legislation to "unambiguously state...no law or provision restricting access to information applies to Inspectors General unless that law or provision expressly so states, and that such unrestricted Inspector General access extends to all records available to the agency, regardless of location or form."[151]

Only by withdrawing the flawed OLC opinion or passing supplemental legislation can the original purpose of the IG Act and the intent of Congress be restored: "to provide a means for keeping [federal agencies] and the Congress fully and currently informed about problems and deficiencies" of federal agencies like the Department of Justice, and the "necessity" for "corrective action."[152] Congress and the public both deserve the fullest information about the executive branch, its operations, and any fraud or abuses of its power and authority.

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Endnotes

1. *Open Government*, Dep't of Justice, http://www.justice.gov/open (last accessed Oct. 15, 2015) ("The Department of Justice is committed to achieving the President's goal of making this the most transparent Administration in history.").
2. Memorandum from Karl R. Thompson, Principal Deputy Assistant Attorney Gen., Dep't of Justice Office of Legal Counsel, to Sally Quillian Yates, Deputy Attorney Gen., Dep't of Justice, *The Department of Justice Inspector General's Access to Information Protected by the Federal Wiretap Act, Rule 6(e) of the Federal rules of Criminal Procedure, and Section 626 of the Fair Credit Reporting Act* (July 20, 2015), (hereinafter [OLC Op.]). Since the OLC released its July 20 opinion, a second copy was published online at the DOJ website with pagination that differs from the original. This paper cites to the original copy of the memorandum, available here: https://www.ignet.gov/sites/default/files/files/OLC%20IG%20Act%20Opinion%20-%207-20-15%20.pdf.
3. *'All' Means 'All': The Justice Department's Failure to Comply With Its Legal Obligation to Ensure Inspector General Access to All Records Needed for Independent Oversight: Hearing Before the S. Comm. on the Judiciary,* 114th Cong. (Aug. 5, 2015) [hereinafter (S. Judiciary Comm., Hearing on Aug. 5, 2015)] (statement of Michael E. Horowitz, Inspector General, Dep't of Justice) (stating "[I]n 2010 and 2011, FBI lawyers opined that the DOJ-OIG should not have access to certain categories of information, namely grand jury, wiretap, and credit information. FBI lawyers also identified about ten other categories of information which its lawyers believed the DOJ-OIG was not entitled to access.").
4. Pub. L. 95–452, §1, Oct. 12, 1978, 92 Sta. 1101; codified at 5 U.S.C. App. §1 et. seq.
5. Wendy Ginsberg & Michael Greene, Cong. Research Serv., R43814, Federal Inspectors General: History, Characteristics, and Recent Congressional Actions 1 (Dec. 8, 2014); Pub. L. No. 95–452, 92 Stat. 1101 (codified as amended at 5 U.S.C. app. (1988 & Supp. IV 1992)).
6. *IG Act History*, CIGIE, https://www.ignet.gov/content/ig-act-history (last visited Oct. 15, 2015).
7. *Access to Justice: Does DOJ's Office of Inspector General Have Access to Information Needed to Conduct Proper Oversight?: Hearing Before the H. Comm. on the Judiciary,* 113th Cong. (Sept. 9, 2014) (hereinafter [H. Judiciary Comm., Hearing on Sept. 9, 2014]) (statement of Rep. Conyers).
8. S. Rep. No. 95-1071, at 2 (1978), *as reprinted in* 1978 U.S.C.C.A.N. 2676, 2684; 5 U.S.C. (IG Act) App. §§ 3, 4(d), 5(a)-(d), 6(a)(4), (e), 8.
9. S. Rep. No. 95-1071, at 3, *as reprinted in* 1978 U.S.C.C.A.N. 2676, 2678 (Further, Congress clarified its intent to assign investigative functions "to an individual whose independence is clear and whose responsibility runs directly to the agency head and ultimately to the Congress" specifically for the purpose of ". . . removing the inherent conflict of interest which exists when audit and investigative operations are under the authority of an individual whose programs are being audited.").
10. *See generally,* Margaret J. Gates & Marjorie F. Knowles, *The Inspector General Act in the Federal Government: A New Approach to Accountability*, 36 Ala. L. Rev. 473 (1985).
11. Dep't of Justice, Office of the Inspector Gen., The CIA-Contra-Crack Cocaine Controversy: A Review of the Justice Department's Investigations and Prosecutions, Epilogue (July 1998), *available at* https://oig.justice.gov/special/9712/epilogue.htm.
12. *See S. Judiciary Comm., Hearing on Aug. 5, 2015, supra* note 3 (statement of Paul C. Light).
13. *Id.*; H.R. Rep. No. 100-1020, at 13, 20 (1988) (Conf. Rep.); Inspector General Act Amendments of 1988, Pub. L. No. 100–504, § 102(f), 102 Stat. 2515; Legislative History of the Inspector General Act of 1978, S. Rep. No. 95-1071, 1978 U.S.C.C.A.N. 2676, 2684–85.
14. Pub. L. No. 101–73, tit. V, § 501(b)(1), tit. VII, § 702(c), 103 Stat. 393, 415 (1989) (codified at 5 U.S.C. app. §§ 8E, 11 (1988 & Supp. IV 1992)); Pub. L. No. 100–527, §§ 13(h)(2), (3), 102 Stat. 2643 (1988) (codified as amended at 5 U.S.C. app. §§ 2, 11 (1988 & Supp. IV 1992)); Pub. L. No. 100–504, tit. I, §§ 102(a)-(d), (f)-(h), 104(a), 105–107, 109–113, 102 Stat. 2515–18, 2521–22, 2525–30 (1988) (codified as amended in scattered sections of 5 U.S.C. app.); Pub. L. No. 99–399, tit. IV, § 412(a), 100 Stat. 867 (1986) (codified at 5 U.S.C. app. § 2 (1988)); Pub. L. No. 99–93, tit. I, § 150(a), 99 Stat. 427 (1985) (codified as amended at 5 U.S.C. app. §§ 2, 11 (1988 & Supp. IV 1992)); Pub. L. No. 97–252, tit. XI, § 1117(a)-(c), 96 Stat. 750–53 (1982) (codified as amended at 5 U.S.C. app. §§ 5, 8, 11 (1988 & Supp. IV 1992)); Pub. L. No. 97–113, tit. VII, § 705, 95 Stat. 1544 (1981) (codified as amended at 5 U.S.C. app. §§ 2, 8A, 11 (1988 & Supp. IV 1992)); Pub. L. No. 96–88, tit. V, § 508(n), 93 Stat. 694 (1979) (codified as amended at 5 U.S.C. app. §§ 5, 9, 11 (1988 & Supp. IV 1992)); Ginsburg & Greene, *supra* note 5, at i, 10–12, 14–15 (citing H.R. 302 and H.R. 3770, 113th Congress); William S. Fields, *The Enigma of Bureaucratic Accountability*, 43 Catholic L. Rev. 505, 506 (1994) (reviewing Paul C. Light, Monitoring Government—Inspectors General and the Search for Accountability (1993)).
15. *See, e.g.,* Fields, *supra* note 14, at 519. ("The past ten years have seen the enactment of a host of congressional directives requiring Inspectors General to oversee specific programs. Some of these laws, such as the Single Audit Act, the Chief Financial Officers Act, and the Program Fraud Civil Remedies Act. " *Id.* at i, 10–12 (citing P.L. 113–6, H.R. 314, 113th Congress).
16. 5 U.S.C. Appendix §11; *Integrity and Efficiency in Federal Programs,* Exec. Order No. 12,625, 53 Fed. Reg. 2812 (Jan. 27, 1988).
17. Ginsburg & Greene, *supra* note 5 (citing H.R. 1211, 113th Congress; H.R. 658, 112th Congress); Fields & Robinson, *infra* note 50, at 108.
18. Pub. L. 113-235, 128 Stat. 2200 (Dec. 16, 2014) (emphasis added).
19. I.e., to do so "for reasons other than as expressly provided in the Inspector General Act" when using appropriated funds. *Response of Inspector General Michael Horowitz to the Dep't of Justice Office of Legal Counsel Memorandum of July 23, 2015* (July 23, 2015), https://oig.justice.gov/press/2015/2015-07-23.pdf; [T]o improve OIG access to Department documents and information." *Response of Inspector General Michael Horowitz to the Dep't of Justice Office of Legal Counsel Memorandum of July 23, 2015* (July 23, 2015), https://oig.justice.gov/press/2015/2015-07-23.pdf.

20. S. Comm. on Homeland Sec. and Gov. Affairs, *Johnson Holds Hearing About Federal Watchdogs: "Improving the Efficiency, Effectiveness, and Independence of Inspectors General"* (Feb. 24, 2015), *available at* http://www.hsgac.senate.gov/media/majority-media/johnson-holds-hearing-about-federal-watchdogs-improving-the-efficiency-effectiveness-and-independence-of-inspectors-general; *see also Report by the Office of the Inspector General on the Review of ATF's Operation Fast and Furious and Related Matters: Hearing Before the H. Comm. on Oversight and Gov. Reform*, 112th Cong. (Sept. 20, 2012) (statement of Michael E. Horowitz Inspector General, Dep't of Justice), *available at* https://oig.justice.gov/testimony/t1220.pdf; *Inspectors General: Independence, Access and Authority: Hearing Before the H. Comm. on Oversight and Gov. Reform*, 114th Cong. (Feb. 3, 2015) (statement of Michael E. Horowitz Inspector General, Dep't of Justice), *available at* https://oig.justice.gov/testimony/t150203.pdf.
21. *S. Judiciary Comm., Hearing on Aug. 5, 2015*, *supra* note 3 (statement of Michael E. Horowitz, Inspector General, Dep't of Justice).
22. *Id.*
23. The FBI is part of the U.S. Department of Justice.
24. *S. Judiciary Comm., Hearing on Aug. 5, 2015*, *supra* note 3.
25. *See* Letter from Forty-Seven Inspectors General to the Chairmen and Ranking Members of the Senate Homeland Security and Gov. Affairs Comm. and the H. Comm. on Oversight and Gov. Reform (Aug. 5, 2014), *available at* https://oversight.house.gov/wp-content/uploads/2015/01/IG-Access-Letter-to-Congress-08-05-20141.pdf; H. Judiciary Comm., Hearing of Sept. 9, 2014 (statement of Rep. Goodlatte).
26. OLC Op. at 38.
27. *See, e.g.,* Inspector General Legislation, 1 Op. O.L.C. 16, 17–18 (1977) (arguing that concurrent reporting requirements in Inspector General Legislation offends the president's Article II power).
28. Fields, *supra* note 14, at 520.
29. Inspector General Legislation, 1 Op. O.L.C. 16, 17–18 (1977), *available at* http://www.treasury.gov/about/organizational-structure/ig/Documents/Inspector%20General%20Deskbook%20Volume%203.pdf (concurrent reporting requirements in inspector general legislation offends President's Article II power to direct).
30. *Id.*
31. Colin S. Diver, *Statutory Interpretation in the Administrative State*, 133 U. Pa. L. Rev. 549, 579 (1985) (citing Guido Calabresi, A Common Law For the Age of Statutes 110–11 (1982); Harry H. Wellington, *The Nature of Judicial Review*, 91 Yale L.J. 486, 493 (1982)).
32. *H. Judiciary Comm., Hearing on Sept. 9, 2014*, *supra* note 7.
33. *Peace Corps Office of Inspector General Reacts to DOJ IG's Statement on IG Access Issues*, PEACE CORPS (July 24, 2015), http://www.peacecorps.gov/media/forpress/press/2573/.
34. *See* John Choon Yoo, Note, *Marshall's Plan: The Early Supreme Court and Statutory Interpretation*, 101 Yale L.J. 1607 (1992); Jacob Scott, *Codified Canons and the Common Law of Interpretation*, 98 Geo. L.J. 341 (2010).
35. "Over the past decade, the Supreme Court has edged steadily away from reliance on legislative history in favor of plain meaning." Geoffrey P. Miller, *Pragmatics and the Maxims of Interpretation*, 1990 Wis. L. Rev. 1179, 1181 (1990) (citing United States v. Ron Pair Enters., 109 S. Ct. 1026, 1030 (1989); Blanchard v. Bergeron, 109 S. Ct. 939, 97 (1989) (Scalia, J., dissenting); Pennsylvania v. Union Gas Co., 109 S. Ct. 2273, 2296 (1989) (Scalia, J., concurring in part and dissenting in part).
36. *See* Yates v. United States, 135 S. Ct. 1074, 1082 (noting that the dictionary definitions of the words "tangible" and "object" are relevant, but are not dispositive to the meaning of "tangible object"); *see also, e.g.,* FAA v. Cooper, 132 S. Ct. 1441, 1448–1449 (2012) ("actual damages" has different meanings in different statutes); Wachovia Bank, N.A. v. Schmidt, 546 U.S. 303, 313–314, (2006) ("located" has different meanings in different provisions of the National Bank Act); T-Mobile S., LLC v. City of Roswell, Ga., 135 S. Ct. 808, 820 (2015) (Alito, J. concurring).
37. *See generally,* Reed Dickerson, The Interpretation and Application of Statutes (1975); William N. Eskridge, Jr., *Public Values in Statutory Interpretation*, 137 U. Pa. L. Rev. 1007 (1989); Max Radin, *Statutory Interpretation*, 43 Harv. L. Rev. 863 (1930).
38. *See* United States v. Santos, 553 U.S. 507 (2008) (plurality opinion); William N. Eskridge, Jr., *The New Textualism*, 37 UCLA L. Rev. 621 (1990); William D. Popkin, *An Internal Critique of Justice Scalia's Theory of Statutory Interpretation*, 76 Minn. L. Rev. 1133 (1992).
39. *See* Howe v. Smith, 452 U.S. 473, 483–85 (1981); United States v. R.L.C., 503 U.S. 291, 298–305 (1992) (plurality opinion) (finding plain text ambiguous and adopting a narrow reading on the basis of legislative history); Office of Legal Pol'y, Using and Misusing Legislative History: A Re-Evaluation of the Status of Legislative History in Statutory Interpretation, Rep. to the Att'y Gen. (1989); Lawrence Solan, *Law, Language, and Lenity*, 40 Wm. & Mary L. Rev. 57, 144 (1998); Michael H. Koby, *The Supreme Court's Declining Reliance on Legislative History: The Impact of Justice Scalia's Critique*, 36 Harv. J. on Legis. 369 (1999).
40. Of course, the DOJ OLC disagrees, claiming: "statutory exceptions in Title III, Rule 6(e), and section 626 permit disclosure of protected information to OIG only in a limited set of circumstances, and that the limits on disclosure apply even when OIG requests material under section 6(a)(l) of the IG Act." OLC Op. at 2.
41. *All,* Merriam-Webster.com, http://www.merriam-webster.com/dictionary/all (last visited Oct. 15, 2015).
42. "The I.G. Act adopted by Congress in 1978 is crystal clear. Section 6(a) expressly provides that inspectors general must be given complete, timely and unfiltered access to all agency records." *H. Judiciary Comm., Hearing on Sept. 9, 2014, supra* note 7 (statement of Inspector General Horowitz).

43. "When used as an indefinite article, "a" means "[s]ome undetermined or unspecified particular." McFadden v. United States, 135 S. Ct. 2298, 2304 (2015) (citing Webster's New International Dictionary 1 (2d ed. 1954)). Had § 6(a)(1) said "a" instead of "all," its textual arguments would be viable.
44. *See* § 4 of the IG Act.
45. IG Act § 4(a)(1).
46. G Act § 4(a)(3).
47. These include the identity of confidential sources, and limited sensitive information concerning ongoing investigations. IG Act § 8(E); OLC Op. at 50.
48. Ginsburg & Greene, *supra* note 5; S. Rep. No. 95-1071, at 4-5 (1978), *as reprinted in* 1978 U.S.C.C.A.N. 2676, 2679-80.
49. *H. Judiciary Comm., Hearing on Sept. 9, 2014, supra* note 7 (statement of Rep. Goodlatte) ("It's difficult to imagine how the [DOJ IG] might conduct those auditing and investigative responsibilities without full access to relevant court documents, intelligence reports, or financial records. It's also difficult to imagine how the inspector general might conduct effective oversight of the Department of Justice if the material it requires can only be obtained with the permission of department attorneys."); *see also* DHS OIG, *DHS Inspector General Releases Statement Supporting Inspectors General Access to Information* (July 27, 2015), https://www.oig.dhs.gov/assets/pr/2015/oigpr_072715.pdf.
50. *See, e.g.,* United States v. Westinghouse Elec. Corp., 788 F.2d 164, 170 (3d Cir. 1986) ("There is, however, no legislative history that suggests Congress intended . . . to limit the scope of the Inspector General's subpoena power. A constricted interpretation would be at odds with the broad powers conferred on the Inspector General by the statute."); S. Rep. No. 95-1071, at 2–3, *as reprinted in* 1978 U.S.C.C.A.N. 2676, 2678, 2684; William S. Fields & Thomas E. Robinson, *Legal and Functional Influences on the Objectivity of the Inspector General Audit Process*, 2 Geo. Mason Indep. L. Rev. 97, 108 (1993) ("The IG Act's language and legislative history envisioned Inspectors General who would serve as impartial and objective fact-finders, sufficiently divorced from the policy and political arenas that the three branches of government and the public at large would view their findings and recommendations with credibility." *Id.* at 108.).
51. "[T]he head of the agency may not prohibit, prevent or limit the [IG] from undertaking and completing any audits and investigations which the [IG] deems necessary, or from issuing any subpoenas deemed necessary in the course of such audits and investigations." S. Rep. No. 95-1071, at 2 (Aug. 8, 1978) *as reprinted in* 1978 U.S.C.C.A.N. 2676, 2677.
52. S. Rep. No. 95-1071, at 3, *as reprinted in* 1978 U.S.C.C.A.N. 2676, 2678. (emphasis added).
53. *IG Act History*, CIGIE, https://www.ignet.gov/content/ig-act-history (last visited Oct. 15, 2015).
54. *See* OLC Op. at 11–13, 16, 21, 26, 28, 35, 37; United States v. Westinghouse Elec. Corp., 788 F.2d 164, 170 (3d Cir. 1986) ("There is, however, no legislative history that suggests Congress intended…to limit the scope of the Inspector General's subpoena power. A constricted interpretation would be at odds with the broad powers conferred on the Inspector General by the statute."); Neighborhood Assistance Corp. of Am., v. United States Dep't of Hous. & Urban Dev., 19 F. Supp. 3d 1, 18–22 (D.D.C. 2013) ("The IG Act does not impose an absolute bar on agency involvement with an Inspector General audit; the Act only prohibits the agency from interfering with such an audit."); 5 U.S.C. App. § 3(a) (proscribing an agency head from "prevent[ing] or prohibit[ing] the Inspector General from initiating, carrying out, or completing any audit or investigation.").
55. *H. Judiciary Comm., Hearing on Sept. 9, 2014, supra* note 7 (statement of Inspector General Horowitz) ("A review of agency correspondence with the OIG evinces a mindset that views DOJ leadership as the arbiter of what information [the OIG] receives. It reveals an agency that believes the OIG must ask for and receive permission to review [DOJ] data and material and that sanctions OIG investigations as necessary to advance its own supervisory responsibilities alone."); Peace Corps IG Kelly Buller, *Peace Corps Office of Inspector General Reacts to DOJ IG's Statement on IG Access Issues,* Peace Corps (July 24, 2015) http://www.peacecorps.gov/media/forpress/press/2573/.
56. OLC Op. at 11–13, 16, 21, 26, 28, 35, 37.
57. *See, e.g.,* Consolidated and Further Continuing Appropriations Act of 2015 § 218, Pub. L. No. 113–235, 128 Stat. 2130, 2200 (Dec. 16, 2014)*;* Commerce, Justice, Science, and Related Agencies Appropriations Act of 2015, S. 2437, 113th Cong. § 217 (2014); *Empowering Agency Oversight: Views from the Inspectors General Community: Hearing Before the H. Comm. on Oversight and Gov't Reform*, 113th Cong. 3 (2014) (statement of Darrell Issa, Chairman, H. Comm. on Oversight and Gov't Reform); *Oversight of the FBI: Hearing Before the S. Comm. on the Judiciary*, 113th Cong. 2 (2014) (statement of Charles Grassley, Ranking Member, S. Comm. on the Judiciary); Letter from Charles Grassley, Ranking Member, S. Comm. on the Judiciary, et al. to Carolyn Hessler-Radelet, Acting Director, Peace Corps (Apr. 23, 2014); Letter from Tom Coburn, Ranking Member, S. Comm. on Homeland Sec. and Gov't Affairs, to Mitch McConnell, Minority Leader, U.S. Senate (June 4, 2014).
58. OLC Op. at 5 (citing IG Act Amends. of 1988, Pub. L. No. 100–504, § 102(c), 102 Stat. 2515, 2515–16; H.R. Rep. No. 100-1020, at 24 (1988) (Conf. Rep.); H.R. Conf. Rep. No. 100-1020, 23–24 (Sept. 30, 1988) *as reprinted in* 1988 U.S.C.C.A.N. 3179, 3182–83.).
59. *See S. Judiciary Comm., Hearing on Aug. 5, 2015, supra* note 3 (statement of Paul C. Light); H.R. Rep. No. 100-1020, at 13, 20 (1988) (Conf. Rep.); Inspector General Act Amendments of 1988, Pub. L. No. 100–504, § 102(f), 102 Stat. 2515; Legislative History of the Inspector General Act of 1978, S. Rep. No. 95-1071, 1978 U.S.C.C.A.N. 2676, 2684-85.
60. *See, e.g.,* News Release, Charles Grassley, Grassley, Leahy Introduce Bill to Make FBI More Accountable for Actions (Feb. 27, 2002), *available at* http://www.grassley.senate.gov/news/news-releases/grassley-leahy-introduce-bill-make-fbi-more-accountable-actions; Emily Bazelon, *No Bark, No Bite,* Slate (Feb. 25, 2008), http://www.slate.com/articles/news_and_politics/jurisprudence/2008/02/no_bark_no_bite.html; Ginsburg & Greene, *supra* note 5, at 4.

61. *H. Judiciary Comm., Hearing on Sept. 9, 2014, supra* note 7 (Representative Conyers stated, "Well, I hope the Office of Legal Counsel issues a strong opinion giving your office unequivocal access to the material and information that you require.... No matter which party controls the executive branch, a strong and independent [OIG] is key to protecting civil liberties, reining in executive overreach, safeguarding taxpayer dollars, and preserving the public trust.").
62. *H. Judiciary Comm., Hearing on Sept. 9, 2014, supra* note 7 (statements of Rep. Conyers).
63. I.e., to do so "for reasons other than as expressly provided in the Inspector General Act" when using appropriated funds. *Response of Inspector General Michael Horowitz to the Dep't of Justice Office of Legal Counsel Memorandum of July 23, 2015* (July 23, 2015), https://oig.justice.gov/press/2015/2015-07-23.pdf.
64. Letter of Forty-Seven Inspectors General to the Chairmen and Ranking Members of the Senate Homeland Security and Gov. Affairs Comm. and the H. Comm. on Oversight and Gov. Reform (Aug. 5, 2014), https://oversight.house.gov/wp-content/uploads/2015/01/IG-Access-Letter-to-Congress-08-05-20141.pdf; Josh Gerstein, *Justice Department Opinion Fuels Oversight Fight*, Politico (July 23, 2015), http://www.politico.com/blogs/under-the-radar/2015/07/justice-department-opinion-fuels-oversight-fight-211166.html#; Kevin Johnson, *Justice IG: Independence Undermined by Disclosure Limits*, USA Today (July 23, 2015), http://www.usatoday.com/story/news/nation/2015/07/23/justice-inspector-general-challenge/30588021/; Ryan J. Reilly, *DOJ Watchdog Says New Opinion Prevents Him From Doing His Job*, Huff. Post (July 23, 2015), http://www.huffingtonpost.com/entry/department-of-justice-watchdog_55b0ff71e4b0a9b94853cf99.
65. *See Statement of Paul C. Light*, *supra* note 59, at 4.
66. The Chair and Vice-Chair of the CIGIE so characterized the FBI's interpretation of the IG Act first used to justify withholding information from OIG. Letter from CIGIE to Deputy Assistant Attorney Gen. John E. Bies 2 (Oct. 7, 2011).
67. 1) The Federal Wiretap Act, Title III of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 18 U.S.C. §§ 2510–2522 (Title III), read to limit the Department's authority to disclose the contents of intercepted communications; 2) Rule 6(e) of the Federal Rules of Criminal Procedure, read to limit the Department's authority to disclose grand jury materials; and 3) section 626 of the Fair Credit Reporting Act, 15 U.S.C. § 16819 (FCRA), read to limit the authority of the Federal Bureau of investigation (FBI) to disclose consumer information obtained pursuant to National Security Letters issued under section 626. *See* OLC Op. in passim; Letter from CIGIE to Deputy Assistant Attorney. Gen. John E. Bies (Oct. 7, 2011); Letter from CIGIE to Deputy Assistant Attorney Gen. John E. Bies (June 24, 2014).
68. 451 U.S. 259, 266–67 (1981).
69. *Id.* (citing 2A C. Dallas Sands, Sutherland on Statutes and Statutory Construction § 51.02 (4th ed. 1973)).
70. 451 U.S. 259, 266–67 (1981) (citing Morton v. Mancari, 417 U.S. 535, 549 (1974), quoting Posadas v. National City Bank, 296 U.S. 497, 503 (1936)).
71. "Examination of the legislative history is guided by another maxim: repeals by implication are not favored," Watt v. Alaska, 451 U.S. 259, 266–67 (1981) (citing United States v. Borden Co., 308 U.S. 188, 198 (1883)). The Supreme Court "will not infer a statutory repeal "unless the later statute 'expressly contradict[s] the original act'" or unless such a construction "is absolutely necessary...in order that [the] words [of the later statute] shall have any meaning at all." Nat'l Ass'n of Home Builders v. Defenders of Wildlife, 551 U.S. 644, 662 (2007) (citing Traynor v. Turnage, 485 U.S. 535, 548 (1988) (quoting Radzanower v. Touche Ross & Co., 426 U.S. 148, 153 (1976), in turn quoting T. Sedgwick, The Interpretation and Construction of Statutory and Constitutional Law 98 (1874)); *see also* Branch v. Smith, 538 U.S. 254, 273 (2003) ("An implied repeal will only be found where provisions in two statutes are in 'irreconcilable conflict,' or where the latter Act covers the whole subject of the earlier one and 'is clearly intended as a substitute.'"); Posadas v. National City Bank, 296 U.S. 497, 503 (1936) ("[T]he intention of the legislature to repeal must be clear and manifest.").
72. *Watt*, 451 U.S. at 266–67 (citing Mancari, *supra*, 417 U.S., at 551; Haggar Co. v. Helvering, 308 U.S. 389, 394 (1940)).
73. *H. Judiciary Comm., Hearing on Sept. 9, 2014, supra* note 7.
74. OLC Op. at 5.
75. *S. Judiciary Comm., Hearing on Aug. 5, 2015, supra* note 3 (statement of Senator Grassley).
76. OLC opinions as far back as 1977 argue against an OIG in the DOJ. Inspector General Legislation, 1 Op. O.L.C. 16, 17–18 (1977) (concurrent reporting requirements in inspector general legislation offends President's Article II power to direct and violates separation of powers).
77. "The Department of Justice is committed to achieving the President's goal of making this the most transparent Administration in history." Open Government, Dep't of Justice, http://www.justice.gov/open (last accessed Aug. 11, 2015). *See also,* Paul D. Thacker, *Where the Sun Don't Shine*, Slate (Mar. 12, 2013), http://www.slate.com/articles/news_and_politics/politics/2013/03/barack_obama_promised_transparency_the_white_house_is_as_opaque_secretive.html; David Sobel, *Obama's Transparency Promise: We're Still Waiting*, EFF (Apr. 19, 2009), https://www.eff.org/deeplinks/2009/04/obamas-transparency-.
78. OLC Op. at 11.
79. OLC Op. in passim.
80. OLC Op. at 6–7.

81. Branch v. Smith, 538 U.S. 254, 273 (2003) ("An implied repeal will only be found where provisions in two statutes are in 'irreconcilable conflict,' or where the latter Act covers the whole subject of the earlier one and 'is clearly intended as a substitute.'"); Nat'l Ass'n of Home Builders v. Defenders of Wildlife, 551 U.S. 644, 662 (2007); Traynor v. Turnage, 485 U.S. 535, 548 (1988); Watt v. Alaska, 451 U.S. 259, 266–67 (1981); Radzanower v. Touche Ross & Co., 426 U.S. 148, 153 (1976) (citing T. Sedgwick, The Interpretation and Construction of Statutory and Constitutional Law 98 (1874)); Morton v. Mancari, 417 U.S. 535, 549 (1974); Haggar Co. v. Helvering, 308 U.S. 389, 394 (1940); Posadas v. National City Bank, 296 U.S. 497, 503 (1936).
82. OLC Op. at 13. (internal quotations omitted).
83. *S. Judiciary Comm., Hearing of Aug. 5, 2015*, *supra* note 3 (statement of IG Michael Horowitz).
84. 18 U.S.C. §2517(1) (emphasis added).
85. Whether Agents of the Department of Justice Office of Inspector General are "Investigative or Law Enforcement Officers" Within the Meaning of 18 U.S.C. § 2510, 14 Op. O.L.C. 107, 109–10 (1990).
86. OLC Op. at 7.
87. *Id.* at 9.
88. *Id.* at 11–13.
89. *Id.* at 16.
90. *Id.* at 17.
91. *Id.* (citing Fed. R. Crim. P. 6(e)(2)(B)).
92. Although OLC suggested as a "prudential matter" that OPR seek a court order. *Id.* at 21 n.13.
93. *Id.* at 21.
94. United States v. Sells Engineering, Inc., 463 U.S. 418, 442 (1983) (holding "(1) disclosure of grand jury materials to attorney for the Government for use in performance of such attorney's duty is limited to use by those attorneys who conduct the criminal matters to which the materials pertain, and same is true though attorneys for Civil Division of Justice Department are within the class of "attorneys for the government" within the rule, and (2) judicial precedent requiring strong showing of particularized need for grand jury materials before any disclosure will be permitted, and providing standard, governs disclosure to public parties as well as private ones, and is applicable when government officials seek access in furtherance of their responsibility to protect the public weal.").
95. Sells Engineering, Inc., 463 U.S. at 442 ("Congress was strongly concerned with assuring that prosecutors would not be free to turn over grand jury materials to others in the Government for civil uses without court supervision, and that statutory limits on civil discovery not be subverted—concerns that apply to civil use by attorneys within the Justice Department as fully as to similar use by persons in other government agencies.").
96. *See* OLC Op. at 18–20.
97. United States v. Sells Eng'g, Inc., 463 U.S. 418 (1983)
98. *Id.* at 445.
99. *Id.* at 427.
100. *Id.* (citing Illinois v. Abbott & Associates, Inc., 460 U.S. 557, 568 n.15 (1983)).
101. *Id.* at 447. (Burger, C.J., dissenting, joined by Justice Powell, Justice Rehnquist, and Justice O'Connor).
102. *Id.* at 465. (Burger, C.J. dissenting).
103. *OIG Mission*, Office of the Inspector Gen., https://oig.justice.gov/ (last visited (Sept. 21, 2015).
104. *See* OLC Op. at 24.
105. *See Id.* at 21–25.
106. "I'll let you write the substance…you let me write the procedure, and I'll [win] every time." *Regulatory Reform Act: Hearing on H.R. 2327 Before the Subcomm. on Admin. Law and Governmental Regulations of the H. Comm. on the Judiciary*, 98th Cong. 312 (1983) (statement of Rep. John Dingell).
107. OLC Op. at 26–28; (A)(ii) states: "Disclosure of a grand-jury matter…may be made to…any government personnel…that an attorney for the government considers necessary to assist in performing that attorney's duty to enforce federal criminal law." *Id.* at 26.
108. *Id.* at 31.
109. Memorandum for the Acting Assistant Attorney General, Office of Legal Counsel, from Michael E. Horowitz, Inspector General, 15 (June 24, 2014).
110. In re Matters Occurring Before the Grand Jury Impaneled July 16, 1996, Misc. #39 (W.D. Okla. June 4, 1998).
111. *Id*.
112. OLC Op. at 25–26 n. 14.
113. Letter from Michael E. Horowitz, Inspector General, Dep't of Justice, to Sen. Charles E. Grassley, Summary of the Department of Justice Office of the Inspector General's Position Regarding Access to Documents and Materials Gathered by the Federal Bureau of Investigation, attachment at 9 (May 13, 2014).

114. OLC Op. at 31–32.
115. 15 U.S.C. §1681u(a).
116. OLC Op. at 32.
117. "The statute's purpose thus does require OIG to have blanket access to [§] 626s information." OLC Op. at 35.
118. *Id.* at 34.
119. *Id.* at 35.
120. *Id.* at 35, 37.
121. Justice Douglas noted in *Barlow v. Collins*, 397 U.S. 159, 166 (1970), that when the "principal dispute relates to the meaning of [a] statutory term, the controversy must ultimately be resolved, not on the basis of matters within the special competence of the [agency], but by judicial application of canons of statutory construction."
122. Colin S. Diver, *Statutory Interpretation in the Administrative State*, 133 U. Pa. L. Rev. 549, 579 (1985) (citing Guido Calabresi, A Common Law For the Age of Statutes 110–11 (1982); Harry H. Wellington, *The Nature of Judicial Review*, 91 Yale L.J. 486, 493 (1982)).
123. "The choice of interpretive mode is a decision not simply about 'controlling the bureaucracy,' but about allocating interpretive authority between the bureaucracies of court and agency." Colin S. Diver, *Statutory Interpretation in the Administrative State*, 133 U. Pa. L. Rev. 549, 599 (1985). Here, that allocation concerns agency, embedded agency, and Congress.
124. *S. Judiciary Comm., Hearing on Aug. 5, 2015, supra* note 3 (statement of Senator Grassley).
125. Arthur H. Garrison, *The Role of the OLC in Providing Legal Advice to the Commander in Chief After September 11th: The Choice Made by the Bush Administration Office of Legal Counsel*, 32 J. Nat'l. Assoc. Admin. L. Judiciary 648, 712 (Oct. 15, 2012), http://digitalcommons.pepperdine.edu/cgi/viewcontent.cgi?article=1155&context=naalj (citing *Secret Law and the Threat to Democratic and Accountable Government: Hearing Before the Subcomm. on the Constitution of the Comm. on the Judiciary*, 110th Cong. 6, 30 (2008) (statement of John P. Elwood, Deputy Assistant Attorney Gen., Office of Legal Counsel)).
126. OLC Op. at 39. (citing Illinois v. Abbott & Assoc., Inc., 460 U.S. 557 (1983)).
127. *See id.* at 39–41.
128. *See id.* at 39–41, 47.
129. *See supra* notes 3–7, 13–17.
130. *See* OLC Op. at 47–49.
131. *Contra* OLC Op. at 49; *but see* Sossamon v. Texas, 131 S. Ct. 1651, 1661 (2011) (the clear statement rule is foremost a safeguard to "ensure Congress does not, by broad or general language, legislate on a sensitive topic inadvertently or without due deliberation.").
132. Consolidated and Further Continuing Appropriations Act § 218, Pub. L. No. 113–235, 128 Stat. 2130, 2200 (Dec. 16, 2014).
133. OLC Op. at 57.
134. *Id.*
135. *Id.* at 42–43. OLC supports adaptions of this rule almost exclusively with previous OLC opinions.
136. William N. Eskridge Jr., *Public Values in Statutory Interpretation*, 137 U. Pa. L. Rev. 1007, 1064–65 (1989).
137. *See* Jonathan Macey, *Executive Branch Usurpation of Power: Corporations and Capital Markets*, 115 Yale L.J. 2416 (2006).
138. *S. Judiciary Comm., Hearing on Aug. 5, 2015, supra* note 3 (statement of Inspector General Michael Horowitz).
139. "If either [the OPR or OIG] "found" that OLC's advice was wrong, or even egregiously wrong, it would remain the case that OLC, the AG and the President disagree. And they are the relevant decision makers on such questions within the Executive branch. What is needed is a repudiation of the advice at the OLC and AG level, something that is unlikely to occur, if at all, until a new Administration is in place." Marty Lederman, *Internal DOJ Investigation of OLC Advice-Giving*, Balkinization (Feb. 27, 2008), http://balkin.blogspot.com/2008/02/internal-doj-investigation-of-olc.html.
140. Inspector General Legislation, 1 Op. O.L.C. 16, 17–18 (1977) (arguing that concurrent reporting requirements in inspector general legislation offends the President's Article II power to direct).
141. *Id.*; Common Legislative Encroachments on Executive Branch Authority, 13 Op. O.L.C. 248, 255 (July 27, 1989); Status of the Commission on Railroad Retirement Reform for Purposes of the Applicability of Ethics Laws, 13 Op. O.L.C. 285 (Sept. 4, 1989) ("[T]he Department has repeatedly opined that statutes purporting to require that executive branch officials submit reports directly to Congress...would raise serious constitutional questions by impairing the President's constitutional right to direct his subordinates."); Constitutionality of Statute Requiring Executive Agency to Report Directly to Congress, 6 Op. O.L.C. 632, 641 (1982) ("Constitutionality of Direct Reporting"); Memorandum for the Hon. Morris K. Udall, Chairman of the Subcommittee on Energy and the Environment, from Thomas M. Boyd, Acting Assistant Attorney Gen., Office of Legislative and Intergovernmental Affairs, Re: H.R. 3049; H.R. 3285; H.R. 2126 (Apr. 22, 1988); The Constitutional Separation of Powers Between the President and Congress, 20 Op. O.L.C. 124, 169 (1996) (Constitutional Separation of Powers); Memorandum Opinion for the General Counsel Office of Management and Budget and Acting General Counsel Dep't of Homeland Security, Mem. Op. O.L.C., passim, 13–14 n.7 (Jan. 29, 2008), http://www.law.umich.edu/facultyhome/margoschlanger/Documents/Publications/Offices_of_Goodness/Constitutionality_of_Direct_Reporting_Requirement_in_Section_802.pdf.

142. Brian D. Miller, *Three Ideas to Improve Effective Inspector General Access to Both Information and Individuals*, J. Pub. Inquiry, 13 (Spring/Summer 2009), http://www.slideshare.net/DepartmentofDefense/journal-of-public-inquiry-springsummer-2009.
143. *Id.* at 15.
144. *Id.* at 14.
145. *Id.* at 16.
146. The OLC Op. repeatedly characterizes absolute access by the IG as "unrealistic" (*see, e.g.,* OLC Op. at 43), but disregards the statutory and structural constraints on the IG's use of information. *See* Fields & Robinson *supra* note 50, at 120.
147. "The only means to address this serious threat to Inspector General independence is for Congress to promptly pass legislation that affirms the independent authority of Inspectors General to access without delay all information and data in an agency's possession that an Inspector General deems necessary to execute its oversight functions under the law." Letter from CIGIE to the Chairmen and Ranking Members of the S. Comm. on Homeland Security and Governmental Affairs and H. Comm. on Oversight and Government Reform (Aug. 3, 2015), https://www.ignet.gov/sites/default/files/files/CIGIE%20Letter%20to%20HSGAC%20HOGR%20-%208-3-15.pdf.
148. *Id.*
149. This section presently reads: (1) to have access to all records, reports, audits, reviews, documents, papers, recommendations, or other material available to the applicable establishment which relate to programs and operations with respect to which that Inspector General has responsibilities under this Act.
150. Or as written in *S. Judiciary Comm, Hearing on Aug. 5, 2015*, *supra* note 3 (testimony of Danielle Brian, Executive Director, Project On Government Oversight*), available at* http://www.pogo.org/our-work/testimony/2015/testimony-of-pogos-danielle-brian.html, "IG offices shall be granted access to all agency records notwithstanding any other existing or future law or any other prohibition on disclosure."
151. CIGIE, *supra* note 147, at 3.
152. IG Act § 2.