GAO AUDITS AND POPPY BUSH'S COVERT WORLD

Steven Aftergood has an important update on the continuing saga of whether or not GAO can conduct investigations of intelligence activities. He explores the source of current restrictions on GAO review: a 1988 OLC opnion written by Douglas Kmiec.

> The current dispute between the Obama Administration and some members of Congress over whether to strengthen oversight of intelligence programs by the Government Accountability Office is rooted in a 1988 opinion from the Justice Department Office of Legal Counsel (OLC), which held that GAO access to intelligence information is actually barred by law.
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> In 1988, the GAO requested access to intelligence files concerning Panama as part of an investigation of U.S. policy towards Panamanian leader Manuel Noriega. In response to an inquiry from the National Security Council, the Office of Legal Counsel issued an opinion (pdf) stating that the GAO was not entitled to the requested records on Panama and Noriega. Not only that, but the opinion (written by Acting OLC head Douglas W. Kmiec) concluded categorically that "GAO is precluded by the Intelligence Oversight Act from access to intelligence information."
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> Today, the FBI cites that 1988 opinion to justify its refusal to permit GAO to perform a review of the FBI counterterrorism program and other matters previously studied by GAO.
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> The 1988 OLC opinion "has had a broad negative impact on our access to information at the FBI and several other

> agencies that are part of the intelligence community," wrote Acting Comptroller General Gene L. Dodaro in a recent letter (pdf).

Aftergood goes on to explore the troubling current use of this 1988 opinion protecting raw intelligence to protect more function-oriented reviews of Executive Branch counter-terrorism activities.

But I couldn't get by the multiple levels of irony of the OLC opinion itself.

The OLC opinion was written in response to a June 23, 1988 letter asking to what extent GAO could investigate whether Executive Branch foreign policy making adequately accounted for the illegal activities of top foreign officials like Manuel Noriega.

> This memorandum is in response to your request for the opinion of this Office on whether, or to what extent, the Administration has a legal basis for declining to cooperate with the pending General Accounting Office ("GAO") investigation concerning U.S. foreign policy decisions with respect to Manuel Noriega. In its June 23, 1988 letter to the National Security Council, GAO described the nature and purpose of the investigation: In order to evaluate whether "information about illegal activities by high level officials of other nations may not be adequately considered in U.S. foreign policy decisions . . ., the General Accounting Office is undertaking an initial [*2] case study of how information about General Noriega was developed by various government agencies, and what role such information played in policy decisions regarding Panama." As stated in the National Security Council's response to GAO of July 13, 1988, representatives of GAO have made it clear that GAO's "three

> areas of interest [are] intelligence files, law enforcement files, and the deliberative process of the Executive branch, including internal communications and deliberations leading to Executive branch actions taken pursuant to the President's constitutional authority."

The GAO investigation, then, would have been a part of Congress' (and, to a significant extent, John Kerry's) larger attempt to investigate BCCI and Noriega and CIA involvement in the drug trade. Just as importantly, the request and the August 16, 1988 response would have taken place in the shadow of a Presidential election that would result in Poppy Bush's election. The same Poppy Bush who seems to have had a role in CIA operations in Latin America in the 1960s. The same Poppy Bush who led the CIA in 1976. The Poppy Bush with ties to Iran-Contra. And the Poppy Bush who would invade Panama to overthrow our former client in the first year of his presidency.

I can imagine why candidate Poppy wouldn't want GAO to be sniffing into how much the CIA, say, knew about Noriega's ties to drugs, money laundering, and ultimately, the CIA.

Fast forward to the recent development Aftergood cites as proof that the OLC opinion makes no sense: a recent DOD Instruction that permits GAO access to intelligence information (though not without reserving the right of the Executive Branch to make need to know determinations).

> The OLC opinion that GAO's access to intelligence information is "precluded" by law seems demonstrably wrong and in any case has been overtaken by events. A Department of Defense Instruction (7650.01) explicitly permits GAO access to DoD intelligence information. Do the Justice Department and the FBI believe that this DoD Instruction violates the law?

I'm considerably less optimistic than Aftergood about what the DOD directive means.

But I am amused by the additional ironic twist it adds to this story.

After all, the DOD directive was signed under the ultimate authority of a guy named Robert Gates. Robert Gates, then, is the guy promising new openness on GAO oversight.

The same Robert Gates, at the time in 1988 when GAO unsuccessfully tried to investigate what ultimately would have turned out to be CIA's ties with Noriega's illicit activities, was Deputy Director of CIA. He's the guy who either knew (in the case of Iran-Contra) or signed off on Reagan-Bush activities in Latin America. (Gates was in NSC for the lead-up and invasion of Panama.)

Sure, it's appalling that this expanded interpretation of GAO restrictions is happening under Barack Obama; you would have expected it to take place under Poppy's son.

But aside from that, it's just as troubling that this 1988 OLC opinion pretty obviously used to protect details that would be inconvenient to Poppy Bush's aspirations are now being used to hide details of Obama's counterterrorism programs.

Update: Fixed Gates in "NSC" during the Panama invasion, not NSA.