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[Memo for Special Counsel from David Watkins, re: Potential GAO Audit] [Loose]

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MEMORANDUM TO THE SPECIAL COUNSEL TO THE PRESIDENT

FROM: DAVID WATKINS
ASSISTANT TO THE PRESIDENT
FOR MANAGEMENT AND ADMINISTRATION

SUBJECT: POTENTIAL GAO AUDIT OF WHITE HOUSE SECURITY PROCEDURES

I. ACTION-FORCING EVENT: According to published reports, Representatives Frank Wolf and Bill Clinger have asked the GAO to conduct an investigation of White House security procedures. A GAO investigation would raise a number of significant legal, political and practical concerns. Formulating an appropriate response to the potential GAO audit is therefore a matter of some urgency.

II. BACKGROUND/CONCERNS

1. Legal. A GAO investigation would represent a potentially serious incursion into a core area of presidential authority. On that basis alone, the GAO's legal power to conduct an investigation is subject to serious question. In addition, the statutory basis for a GAO inquiry is doubtful. (The GAO's authority to "evaluate the results of a program or activity . . . carrie[d] out under existing law" should be construed to include only statutorily authorized programs and activities, not those carried out by the Executive Branch under its general constitutional powers.) Finally, the controlling statute provides that a "program-or-activity" evaluation can only be initiated in one of a limited number of ways, e.g., when requested by a committee of Congress with jurisdiction over that particular program. It is highly questionable that a unilateral request by Representatives Wolf and Clinger constitutes a legally sufficient basis for initiating a GAO evaluation of this nature.

2. Political. The political fallout associated with a decision to rebuff the proposed GAO investigation may be substantial. Whatever the legal merits of our position, critics on the Hill and many members of the press would view any failure to cooperate as "stonewalling." The Aldrich Ames affair, widespread media criticism of White House security procedures, and the recent letter to Director Woolsey have already created a highly charged environment. If the White House is viewed as being less than fully cooperative

with the GAO, critics undoubtedly would use this as a vehicle for turning up the decibel level still further.

3. Practical. An investigation of White House security practices necessarily implicates significant privacy concerns. Several critics (purportedly relying on an Administration source) contend, incorrectly, that the FBI has identified a very large number of White House employees with problematic backgrounds. To investigate the claim, the GAO (or any independent auditor) may seek to review individual files. While such a review would be both unprecedented and inappropriate, the issue is likely to come to a head if the GAO investigation proceeds.

III. OPTIONS/ANALYSIS

1. Cooperate with the proposed GAO investigation without qualification.

Analysis: Permitting a GAO evaluation to proceed in this sensitive area would be an unprecedented and legally questionable intrusion into presidential authority. The long-term consequences of allowing this precedent to be set are difficult to predict or control, but may well be substantial. Acquiescing to a GAO evaluation, however, would have the short-term political benefit of allowing the White House to appear fully cooperative. That benefit is at least partially offset by the potential fallout down the road when the GAO report, which may be used for highly partisan purposes, is issued.

2. Cooperate with the proposed GAO investigation, but attempt to negotiate its scope, e.g., by securing an agreement that review of individual files would be out of bounds.

Analysis: Self evidently, this approach has the advantage of protecting the considerable privacy interests at issue in this context. Otherwise, the advantages and disadvantages are essentially the same as in (1) above.

3. Attempt to persuade the GAO and/or Congress that the GAO lacks jurisdiction to conduct such an investigation, and, if persuasion fails, decline to cooperate on legal grounds.

Analysis: Drawing a clear line in the sand preserves the principle that the GAO does not have boundless jurisdiction to investigate certain presidential functions. As stated above, however, the political consequences of this approach may be significant.

4. Oppose the GAO investigation, but develop and implement an alternative form of critical evaluation, such as: (a) an internal review; (b) a review conducted by representatives of the FBI, Secret Service, and other relevant security agencies; (c) a review conducted by an outside expert or panel of experts, e.g. Jim Wolf (security consultant to the Senate Intelligence Committee) or "OPSEC," a division of the National Security Agency specializing in conducting security audits for other federal agencies.

Analysis: Under this approach, the White House would express concern about the appropriateness of a GAO evaluation, but acknowledge that some form of comprehensive review of security procedures may be fruitful. Optimally, the Members who initially requested the GAO investigation would accept this as a reasonable alternative. (Other members of the relevant Senate and House Committees might be willing to approach their colleagues with the suggestion that this is a sensible compromise.) But even if the requesting Members remain adamant, the existence of an alternative form of evaluation may alleviate some of the political fallout associated with a decision to resist the GAO. The more "independent" the evaluation, the greater the likelihood that it will be viewed as acceptable. In that regard, if this option is followed, serious consideration should be given to Senator DeConcini's offer to make Jim Wolf available to the White House. Preliminary inquiries suggest that OPSEC would not be the optimal candidate for this function.

IV. RECOMMENDATION

Option (4) would appear to strike the best balance between the competing political and legal concerns.

cc: Mack McLarty - copy 2 of 4 copies
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