

THE COMPROMISE INTELLIGENCE AUTHORIZATION

As DDay noted, it looks like we'll finally have an intelligence authorization bill. The bill is a partial win for Speaker Pelosi, as it makes full briefing to the Intelligence Committees within six months of the start of a program the default (though the Administration can still avoid doing so if it provides written rationale). And it includes at least a nod to Pelosi's demand that GAO be giving some authority to review intelligence programs. Steven Aftergood calls the GAO access "a foothold."

The Act (in section 348) requires the Director of National Intelligence to prepare a directive on GAO access to intelligence community information – thereby setting the stage for a stable new role for the GAO in intelligence agency audits and reviews. In a letter to Congress (reprinted in the record of the floor debate) withdrawing the threat of a veto, ODNI General Counsel Robert S. Litt stressed that the new directive would not imply any change in existing law or GAO authority. He added that the new directive would also conform with "relevant opinions of the Office of Legal Counsel." However, the only OLC opinion on the subject is from 1988, and it argued that GAO access to intelligence information is "precluded" by law. It hardly seems likely that the new directive would affirm that view.

Instead, the required directive should be seen as analogous to the recently updated Pentagon directive that permitted GAO access to highly classified special access programs,

It remains to be seen whether this compromise will give Congress enough new oversight powers to prevent the abuses that happened under Bush (and heck—I assume the Gang of Four, if not the Gang of Eight—has signed off on assassinating US citizens solely on the President’s say so, so it’s not clear that oversight will be any use in protecting the Constitution). But Jeff Stein reports both Pelosi and DiFi declaring victory, while the White House and DOD remain silent. Here’s Pelosi:

“In passing the Intelligence Authorization Act last night, the Senate upheld our first responsibility – to ensure the security of the American people – while addressing two key objectives,” Pelosi said in a statement Tuesday.

“It expands and improves the congressional notification process for covert action and provides the framework for GAO access to intelligence community information so that the GAO can conduct investigations, audits, and evaluations as requested by Congress,” Pelosi said.

Again, I remain skeptical, but at least this is better than nothing.

Think of it this way. Under these rules, the Bush White House would have had to tell the entire Intelligence Committees they were systematically torturing prisoners by February 1, 2003 (or at least admit in writing they hadn’t and wouldn’t inform the committees, rather than altering documents after the fact to pretend they had). Technically, they would have to have informed Congress of the September 17, 2001 finding dubiously used to authorize the torture program by March 17, 2002. As it happened, they apparently didn’t brief any Democrats that they were torturing prisoners until February 5, 2003, at which point the one they did brief (Jane Harman) objected in writing (and asked whether the President had signed off

on the policy, which presumably meant she had never been briefed on the actual finding). We know Bob Graham had been proposing oversight of the interrogation program by that point, backed by a majority of the committee, even though he had no clue they were torturing (though Tony Blair apparently did). So it's possible Congress would have at least demanded more information sooner about the torture under this system.

That may not have been enough to forestall Dick Cheney's torture program. But it might have subjected it to at least a little more review.

At which point—as presumably has happened on Presidential hit lists—the blame for our egregious abuse of the Constitution would be more widely shared.

Congratulations, Intelligence Committees: you now share in the moral responsibility to protect the Constitution. Please take that responsibility seriously.