

MEMORANDUM FOR THE RECORD

Event: Brief by Commissioner Jamie Gorelick

Type of Event: Informal Brief

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Team Number: 3

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Briefer: Commissioner Gorelick

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Classification: This was an unclassified briefing.

Goerlick noted that in her view, the Department of Defense (DOD) shrank from its key responsibility, which was to protect the American people prior to 9-11. Why was there no CINC in the U.S. to protect the homeland prior to 9-11? The reason provided was always posse comitatus (PC).

After continually receiving this response (PC) to her questions about military defense of the homeland, Gorelick looked into the PC issue. In her view, it is possible to alter the nature of the PC to allow a military role in defense of the homeland. It is not that it simply cannot be done. In her view, the PC argument is a responsive mechanism. The U.S. took an affirmative decision many years ago not to use the military for homeland defense. This was related to charges of the military spying on Americans.

Gorelick noted two instances of importance to her regarding this debate:

1. During the Clinton Administration in discussions leading to PDD 62 and 63, there were efforts to align domestic agencies against the threat of terrorism. At that time, the defense department refused to “step up to the plate.” The FBI wanted the lead. Gorelick believes, and spoke out about this during this time, that the FBI was not the best agency to lead on domestic defense against terrorism. Why? This is because the FBI is smaller than the CINCs and the CINCs have experience in developing war plans and training. The FBI cannot equal that, not now, not ever. However, DoD refused and has refused ever since to take the leading role though it has agreed often to taking a supporting role. Goerlick believes that the nature of DoD is best suited for this task

despite the military's argument that homeland defense is not its job. DoD also does not want the political backlash.

2. When preparing for the Olympics in 1996, there were elaborate protection plans developed with DoD and DOJ as to who would do what in case of an emergency. Commissioner Gorelick got involved in lengthy discussions with John White on these issues. She asked, what if there is a hijacking at one of the stadiums? Who would shoot the plane? The answer was that DoD would provide the technical support to the FBI. A truncated procedure was developed for permission from the President to shoot.

Commissioner Gorelick also referred to a tabletop exercise called Dark Winter. It was an exercise where there was a cyber attack on the Pentagon (John Hamre from can tell us about this exercise). It was apparent at that time that no one was in charge. No one was putting it all together.

Commissioner Gorelick noted that it is very difficult to push DoD to take steps when it do not want to be pushed. It is harder still when the situation is domestic. The bottom line is that Americans must feel safer today than they did after 9-11.

There was a NORTHCOM document on the shelf prior to 9-11. Gorelick strongly believes that Americans have a right to ask why were we not adequately prepared to defend the US prior to 9-11? Why was there no plan at NORAD?. Are they doing more today? What is the training process for this? She pointed out that we should look at the training command, not just the CINCS. We should speak with military planners as well. We should seek to understand the adequacy of these plans and training resources relative to the mission. When NORTHCOM was designed, what was left on the floor? What was the mission decided for NORTHCOM and why? It is likely NORTHCOM will be very involved in emergencies since many other departments and agencies will run out of the capacity to quickly respond to these emergencies. Also, what really happens in an emergency? How do the FBI, Justice and DoD interact when there is an emergency?

As Gorelick recalled during the meeting, there should be documents that reflect DoD's antipathy about taking responsibility for homeland defense. She suggested we speak with Paul Stevens and Judy Miller because they know the history of this issue. We should also speak with former JAGs (Army) who know where "all the bodies are buried." We should also speak with Gordon Adams PAD of OMB. He can provide information on the DoD budget issues related to CT during the Clinton administration.

Gorelick also attended a CSIS meeting where the DoD representative stated the military could not do more in homeland defense because of potential negative reaction within the U.S. At lunch during the meeting, Gorelick recalls that Cohen stated it was not possible for DoD to do more domestically because of PC.

Commissioner Gorelick recommended that we meet with Walt Slocombe, former OSD Assistant Secretary of Defense for Policy, and David Jeremiah, former JCS Vice-Chair. She also noted a conference she attended where the issue discussed was the various roles

of federal agencies in defending the U.S. Judy Miller and Paul Stevens were at that conference and we should speak with both of them.

Other Outstanding Issues

Regarding the NSC, Goerlick noted that we should seek to find out the proportion of the NSC agenda that is dedicated to CT efforts. Was the change of pace dedicated to CT efforts in the past few years noticeable? We need to see the NSC agendas. We should also ask the question, is good policy frustrated by bureaucratic tendencies, such as aversion, turf battles, lack of expertise, etc.

Gorelick also spent some time asking about the story of Saudis (approximately 140) who departed by plane immediately after the 9/11 attacks. We should obtain information on that issue. The Commissioner was informed that Team 1 is looking into this issue. Gorelick also mentioned that we should speak with Bear Bryant at the FBI to obtain information on resources dedicated to the CT mission.

The Commissioner also suggested we do research on the interaction between DoD and CIA. DoD would hinder renditions by sending huge units to ensure no soldier would be harmed. That would cause the operation to no longer be covert.