

COMMISSION SENSITIVE

MFR04013973

MEMORANDUM FOR THE RECORD

Event: Telephone interview of Commissioner Jamie Gorelick

Type of event: Interview

Date: January 9, 2004

Special Access Issues: None

Prepared by: Barbara A. Grewe

Location: Telephone Commission office – Gorelick law office

Participants - Non-Commission:

Participants - Commission: Barbara A. Grewe

Jamie Gorelick called Barbara Grewe to provide supplemental information regarding questions asked of former Attorney General Janet Reno during a Commission interview.

Background

During the Janet Reno interview on December 16, 2003, she was asked about her Guidelines issued on July 19, 1995, regarding the sharing of intelligence information between the Federal Bureau of Investigation (FBI) and the Department of Justice (DOJ) Criminal Division. Before addressing the questions on the issue, Ms. Reno asked to see a copy of the document. She was provided a copy of the document at the conclusion of the interview and promised to get back to us after reviewing the document. On January 9, 2004, Ms. Reno called Barbara Grewe to provide the requested information. At that time she indicated that prior to calling she had consulted with Jamie Gorelick regarding the matter. [See Reno MFR, January 9, 2004] Shortly thereafter on the same day, Jamie Gorelick called Barbara Grewe to provide additional information regarding the matters she had discussed with Ms. Reno.

The July 19, 1995 Guidelines

Gorelick said that Ms. Reno had asked her why the Guidelines contained a “Part B” that set rules regarding the sharing of information where no FISA material was involved. [Note: “Part A” of the Guidelines set rules regarding the sharing of information when FISA information was involved. “Part B” did not involve non-FISA information. Because FISA Court opinions only governed situations where information had been gathered pursuant to a FISA order, the issue was why should there be rules in situations where the FISA Court rules did not apply.] Gorelick conceded that there was no FISA Court requirement to have such Guidelines when no FISA

COMMISSION SENSITIVE

information was involved. She said, however, that even in the situations where no FISA order was presently involved, it could be contemplated that a FISA order may some day be obtained in the matter. It was decided that having records of any prior sharing of information in the particular case with the Criminal Division would be relevant to the FISA primary purpose test. Thus, documentation of contacts had to be made regardless of whether a FISA order was involved.

Gorelick explained that the driving force behind the creation of these guidelines was the fact that John Dionne and Mark Richards of the DOJ Criminal Division had been complaining that the FBI was not providing relevant information regarding possible criminal violations that were uncovered by the FBI while conducting intelligence-based investigations. Dionne and Richards alleged that the DOJ Office of Intelligence Policy and Review (OIPR) was blocking the Criminal Division's access to FBI information. Gorelick said the Attorney General wanted an opinion from the Office of Legal Counsel (OLC) as to what information could legitimately be shared and the meaning of the primary purpose test. She said Walter Dellinger issued an opinion that although the primary purpose test for a FISA order may not be constitutionally mandated, it should be respected. He also wrote that this did not preclude coordination between the FBI and the Criminal Division. He said that the criminal Division could not direct the FBI's intelligence investigation but they could do "quite a bit" together.

As a result Gorelick asked Michael Vatis to draft the Guidelines for the Attorney General. (Gorelick indicated that Vatis had worked with her at the Department of Defense and came with her to DOJ when she became the Deputy Attorney General.) The purpose of the memo was to enforce information – thus, the word "shall" was used to indicate when information was to be shared as opposed to merely "should." Wherever there was a possible violation of the law, the FBI was required to notify the Criminal Division of the relevant facts. Gorelick said OIPR was extremely reluctant about this rule. Although it "reluctantly agreed" to the Guidelines, it interpreted the notification requirement as giving it the right to tell the FBI not to contact the Criminal Division. Gorelick said OIPR Deputy, Allan Kornblum, was particularly unhappy with these provisions and viewed them as an encroachment on OIPR's authorities. When Kornblum

COMMISSION SENSITIVE

left OIPR he became Judge Lamberth's clerk on the FISA Court and wielded extensive influence on Lamberth and caused the wall to be higher.

The Attorney General's procedures provided that any disputes regarding information sharing to be brought to the Deputy Attorney General. Gorelick said by the time she and Vatis had left, no one had brought any disputes to them for resolution. She said the FBI just took its instructions from OIPR. When Eric Holder took over as Deputy Attorney General he turned the issue over to Dan Seikaly. Gorelick did not know whether any disputes were presented to Seikaly.

Gorelick said she did not know anything about how the wall was structured within the FBI. She did not believe that the FBI was required to erect a wall between intelligence and criminal agents, particularly those on the same squad and working related intelligence and criminal cases. She said she was surprised that the FBI interpreted the provisions that way.

COMMISSION SENSITIVE