

## MEMORANDUM FOR THE RECORD

Event: Brief by Commissioner Jamie Gorelick

Type of Event: Informal Brief

Date: September 3, 2003

Prepared by: Bonnie D. Jenkins

Team Number: 3

Location: 2100 K Street

Briefer: Commissioner Gorelick

Participants – Bonnie Jenkins, Mike Hurley, Alexis Albion, Scott Allan, Warren Bass,  
Dana Hyde, Miles Kara

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.

**Event:** Background briefing with Commissioner Jamie Gorelick

**Type of event:** Informal Briefing

**Date:** September 3, 2003 at 3:00pm

**Prepared by:** Bonnie D. Jenkins

**Team Number:** 3

**Location:** 2100 K Street

**Briefer:** Jamie Gorelick

**Participants -** Bonnie Jenkins, Mike Hurley, Alexis Albion, Scott Allen, Warren Bass,

Dana Hyde, Miles Kara

**Classification:** This was an unclassified briefing

Gorelick noted that in her view, the Department of Defense (DoD) shrank from its key responsibility, which was to protect the American people. Why was there no CINC in the US 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 in 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 true that it simply cannot be done. In her view, the PC argument is a responsive mechanism. The US 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. She said there are already at least two instances where the military is engaged within the homeland already:

- the Army Reserves does do riot control and other functions;
- DOMS - an elaborate command center for domestic purposes (ops military support) - a role when civilian authorities are no longer able to carry out their responsibilities.

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

1. During the Clinton Administration, during discussions leading up to PDD 62 and 63, there were efforts to align domestic agencies against the threat of terrorism. During this discussion, the defense department refused to "step up to the plate." The FBI wanted the lead; they really went after it. The FBI was at that point given the leading role for domestic security. Gorelick believed, and spoke out on during this time, that the FBI was not the bet agency to take the lead on domestic defense against terrorism. Why? The FBI is smaller than 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. Gorelick believes that the nature of DoD is best suited for this task. Yet, DoD has argued that it is not its job. DoD also does not want a political backlash. Gorelick believes the military is the most capable to lead this task. It is a very frustrating situation. The military want to have a supporting role, not the leading role.
2. When preparing for the Olympics in July 1996. There were elaborate protection plans developed with DoD and DOJ as to who would do what in case of an emergency. Gorelick got into lengthy

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discussions with John White on these issues. She asked, what if there were 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.

Gorelick also referred to a table top exercise called Dark Winter. It was an exercise where there was a cyber attack on the Pentagon (John Hamre from DoD 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.

It is very difficult to push DoD to take steps when they do not want to be pushed. It is harder still when the situation is domestic. DoD believes domestic defense is undoable. There are a lot of scars on DoD and these are understandable. However, its response has been overbroad. The US people must feel safer today than they were after 9-11.

### Outstanding Issues

Regarding the NSC, Gorelick 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 ST efforts in the past few years noticeable? We need to see the NSC agendas. We also should ask the question, is good policy frustrated by bureaucratic tendencies, such as risk aversion, turf battles, lack of expertise, etc.

Gorelick also spent some time asking about the Saudis (140) who left by plan after the 9/11 attacks. We should obtain information on that. Team 1 is likely looking at this issue. Gorelick also mentioned that we should speak with Bear Bryant at FBI to get information on resources against the CT mission.

Gorelick strongly believes that the US people have the right to ask, why were we not adequately defended before 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 CINC. 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 address these emergencies quickly. Also, what really happens in an emergency? How does the FBI, Justice and DoD interact when there is an emergency?

Gorelick believes there should be documents that reflect DoD's antipathy from taking responsibility for homeland defense.

Gorelick noted that we should speak to Paul Stevens and Judy Miller because they have the history on these issues. She noted that Judy Miller was risk averse. They also know folks we can speak with on this issue.

We should also speak with former JAGs (Army) who know where "all the bodies are buried." There was a NORTHCOM document on the shelf prior to 9-11. However, we chose not to go with what was already thought about. Call Dennis to get names of JAG folks. Gorelick also suggested that we speak with Gordon Adams, PAD of OMB in charge of military in the Clinton administration to get more information on budget issues related to CT.

Gorelick said we should meet with Walt Slocomb, former OSD for policy, and David Jeremiah, former Vice-Chair.

Gorelick referred to a conference she discussed the various roles of agencies in defending the U.S. We should get information on this. Paul Stevens and Judy Miller were at this conference.

Finally, Gorelick said we should do research on the interaction between DOD and CIA. She also pointed out that DoD would hinder renditions by proposing sending huge units to ensure no soldier would get hurt. That would cause the operation to no longer be covert.

Gorelick also mentioned a CSIS meeting she attended. Also was a gentleman from DoD (whose name she could not recall). He said DoD could not do more because of negative reactions in the country. At lunch during the meeting, Cohen said it is not possible for DoD to do more domestically possible because of PC.

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**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

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

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.

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**MEMORANDUM FOR THE RECORD  
PART III**

**Event:** Interview of *Jamie Gorelick*

Department of Justice Deputy Attorney General, March 1994-January 1997.

**Date:** Tuesday, January 13, 2004

**Special Access Issues:** [none]

**Prepared by:** Notes by Janice Kephart-Roberts on Tuesday, January 13, 2004

MFR by Janice Kephart-Roberts on Wednesday, February 04, 2004

**Team Number:** 5 (Border Security)

**Location:** GSA office

**Participants - Non-Commission:** Jamie Gorelick

**Participants - Commission:** Janice Kephart-Roberts, counsel  
Dan Marcus, general counsel

*Note:* no classification required

**Documents provided.** none

**Documents requested.** none

**Recording:** yes

**NOTES:** JKR provided 1995-1997 Congressional INS budget documents and student tracking documents to Ms. Gorelick prior to the interview.

**Amy Jeffress:** home phone 9/11 Personal Privacy office phone 9/11 Personal Privacy

**Seth Waxm:** 9/11 Personal Privacy

DAG job description.

"In each administration there are different configurations to DOJ. In my tenure, the AG asked me to have all the elements reporting to me, and that I then report to her. She (**Reno**) wasn't divorced from the department, rather wanted to assure good management. I had 32 direct reports and 94 US Attorneys, so I had a broad span of control. As a result, for each element, I spent a relatively small amount of time. I had key staff assigned to each element of the department. They did more of the day to day oversight and reporting to me and issues arising out of elements of the department.

### Responsibilities to the INS

“We had weekly or biweekly meetings with the INS leadership, me and the AG. The commissioner (**Meissner**) or her deputy (**Wyrsh** or **Sales**) would attend weekly meetings with all major component heads. Our contact would be primarily through the weeklies, but if an issue arose, we might meet on the issue. There weren't that many issues in INS arena that required such meetings off the weekly schedule.

### Other DAG responsibilities

The criminal division, the FBI, and the DEA would meet. The Associate AG would occasionally meet with the civil litigating components as well, and fairly often we'd meet with Legal Counsel Office, Office of Legal Policy, and the Exec Office for US Attorneys. On occasion we'd ask for strategic plans, but much with the INS was operational as opposed to strategy; much more frequently would be trying to implement various congressional requirements. There are agendas for each INS weekly meeting (note: the Commission has these going back to 1998 only.) The staff, **Seth Waxman** and **Amy Jeffress** routinely reached below the Commissioner level in trying to get things done with the INS.

### Prior experience in immigration

“I had no prior experience with immigration law or policy. Neither did Seth or Amy. I had no one on staff who really did; two other persons **Gerri Ratliffe** and \_\_\_ both had worked with the INS in various ways.

### Helping INS develop priorities

“Priorities were developed by all oversight segments of INS: Congress, the White House, DOJ, and the INS itself. The footnote would add that a huge proportion of INS agenda was being set by Congress which was focused on the SW border.

“The top five projects for the INS while I was there were:

1. responding to desire among the policy makers to have greater security on SW border;
2. enable INS to communicate seamless with FBI on screening of individual across the SW border, which was an issue of technology
3. professionalization of the INS; when I arrived the INS it was a dumping ground:- not adequate resources, equipment, training, and there was a major effort to bring up to capacity to meet challenges it faced.
4. desire to ensure naturalization process considering Congressional requirements draconian;
5. no 5.

### View of the INS role in counterterrorism.

“The INS had a role in counterterrorism to extent it became aware through other intel and law enforcement that there was an illegal alien of interest of terrorism status. As it did not grant visas, it had little access to information in the first instance as to who was coming in. The INS had to examine whether people coming in were legal and enforce laws as they came in.

“The ability of the INS to stop a terrorist at the border would involve real access to real information at the border. This requires the intelligence community to develop info and INS to receive that info. The INS needed the ability to communicate transparently with the FBI, and to be able to use biometrics at the border to determine the bad actors. We spent time and energy and money on that and time on giving INS ability to access biometrics at the border to determine verification of identities.

“I didn’t view the INS as an entity that should be developing high level intelligence capacity on its own. I believed they should receive watchlist information and criminal and rescidivists etc. There were a wide variety of needs that needed to be plugged into the INS system I’m describing.

#### White House interest in the INS

“My recollection of the White House interest in the INS was in receiving intelligence on the waves of illegal immigration coming into the US. I spent time to enhance the intelligence capacity of the INS. I was not impressed with the intelligence from the prior administration. I talked to DOD and the intel community about lending a hand in improving the intel. PDD-39 did give the INS a role. The fact was that the INS had no capacity or responsibility in the visa process except to the extent DOS might query the INS about information they might have. This all comes back to a fairly mechanical process at the border.

#### UBL as a threat to US interests.

“I can’t recall when I first learned of UBL threats. I certainly knew of UBL and Al Qaida in connection with the WTC 1 prosecution. UBL would come up when the FBI would brief on terrorists generally, along with Hizbollah, Hamas, the Tamil Tigers and the IRA. When I was at DOJ, UBL was one of many.

Did you know whether **Meissner** was being informed about terrorist activity? “It was the FBI’s job to inform her. I do recall the FBI saying generally we need more involvement in alien terrorists, but FBI could never give the INS specific operational information. If an issue arose during my tenure, it would appear on my agendas (INS Weeklies). I have a vague recollection that the FBI was unable to que the INS to do anything. FBI had a larger focus on Hamas and radical fundamentalism. During this entire time, the FBI’s view was there were few adherents to terrorists groups in the US and they had a good beat on what was going on.

“I didn’t expect **Meissner** to have intel on this. Her job was to make INS work instead of being dysfunctional. She needed an intel liaison on particular people to be on lookout for, and a way of disseminating this info throughout the INS. However, I wouldn’t think it a high priority for her to be briefed by the intel community.

#### Office of Investigative Agency Policies and Freeh memo of 1994

*Note: Ms. Gorelick reviews the OIAP 1994 Freeh memo.* “This office was more a board we inherited or made (I’m not sure which) to harmonize policy and procedures on criminal and law enforcement activities. **Freeh** as its director, he was the preeminent law enforcement agency head among those at DOJ, including the criminal division. It appears that I noted the participation of aliens in the WTC 1 and CIA shooting and asked him to consider ways to improve the department’s law enforcement capabilities in this area. I think most of the recommendations were either accepted or addressed thereafter. INS would’ve been involved on that board. I can’t remember if there are others. There were a number of items here that became agenda items for the INS or the department. Rationalizing input into DOS visa granting of denying process; numerous overstays from visa waiver; efforts to improve pre inspection program; a lot of work to protect classified information in deportation proceedings. This was where our most important early work on abuse of student visas and sham marriages came from. I don’t recall a FBI fallout on FBI access to asylum information. (ASK DM!). The FBI would often otherwise complain that the INS had not deported terrorists, and INS would say who are they and we’ll go and get them.

“I don’t recall any other Freeh issues on INS or requests for help.

#### Regulation of the six month permitted length of stay for tourists

“I don’t recall any discussion of length of stay for tourists, in the national security context or otherwise.

#### Student tracking

“This was a topic that was on the agenda not infrequently. We monitored the progress of INS strategy. We went through iterations with it. There was a pilot that resulted in progress of changes. I do recall that this issue was percolating within the INS with some prodding from us and **Meissner** saw it as a credit herself. At same time, universities didn’t like it, saying the system should not be for deterring terrorists and imposed costs they couldn’t absorb. A good bit of time was spent by other to sort out these concerns. **Seth** or **Gerri** or **Amy** would be able to elaborate. Don’t recall requesting a briefing on the project. That typically would’ve been done by **Waxman** or **Jeffress**. I had little patience for long briefings. I don’t recall any specific conversations with **Meissner** about the project, nor whether the **AG** or the **White House** expressed interest. It was an issue that got some attention, and thus would’ve gotten to the AG’s attention.

#### View of Meissner as INS Commissioner

"The AG weeklies were held in my office and the AG would come and she had a strong personal relationship with Meissner. I liked Doris very much, but her relationship with me was more professional; with the AG there was a strong personal connection as well. Doris was extraordinarily knowledgeable about immigration and a very thoughtful leader in that regard. She faced tremendous challenge for an agency that was a dumping ground for people and equipment and real estate no one wanted. However, Meissner was not the most effective manager. Both the AG and I spent a lot of time to try to support her managerially. So I personally tried to recruit persons out of the military to assist in various projects and technology and staff and loaning her staff at a managerial level. For example, I dispatched **Gerri Ratliffe** to her aid. **Liz Fine**, similarly, went from Main Justice to INS, and **Dennis Corrigan**, my Chief of Staff, was always on the lookout for highly trained individuals. We did see the technology area as a need and do recall seeking IT personnel. I also asked **Steve Colgate** to supplement.

#### Entry-exit

"I don't recall specifics. I recall there was an issue. I do recall discussions about their technology contracting. In regard to technology, this was not something in which I had expertise and deferred to Justice Management folks. That's **Steve Colgate**. Colgate was very helpful to me and the AG in giving insight into the way the components of DOJ were indeed operating that went to both INS and FBI.

I recall **Bob Bach**.

9/11 Personal Privacy

#### INSPASS, and tech programs

"All had good underlying concepts, like using biometrics to ease people through check points was excellent, and allowing the different entry and exit points was excellent, and the commuter lane and vehicle profiles to speed people through and let the inspectors spend time on more problematic was an excellent concept. The other quality they all shared was that the implementation was always problematic. I felt that I could make biggest contribution by helping INS achieve professionalism.

#### The value of the ATRC.

"Very early on we had a problem with the utilization of intel to support the removal of aliens of whom we had evidence were engaging in terrorist activity. Making it work depended upon the FBI to develop the evidence necessary that a person was a terrorist and evidence that the court would accept. It is true that the INS had a responsibility to remove alien terrorists, but INS could only do so if the INS was told about it. We had all kinds of people to get out.

“I should talk to **Waxman** who burrowed in on that case in LA. During my tenure, I recall there was a dispute whether our evidence was sufficient to exclude people based on info we had. I recall Seth saying we should proceed. I don’t know what dispute arose between the FBI and **Reynolds** and whether there was sufficient evidence. This not exclusive to CT, and very frequently, FBI didn’t have good enough evidence for sufficiency. Reynolds would have to withstand slings and arrows from those asserting he was wimpy when he was trying to figure out what happened with the evidence. This happened in area of terrorist financing as well. We’d get long lists of bank account info, but when you looked to withstand judicial scrutiny, often found it wouldn’t, and we’d often have courts knock us back.

“I have no specifics on secret evidence in terrorism cases.

#### Value of immigration law to remove and exclude terrorists

“Given how few rights aliens have, as having seen in post 9/11, (with extraordinary ease we can find out of status aliens and then exclude people you could never prosecute. When immigration laws used overbroadly, it raises all sorts of equities for us that we are dealing with now.

#### Consolidation of border agencies

“I missed both moments in time in the Clinton administration when the issues of INS restructuring arose. I don’t have any problem with one face at the border hypothetically. But, I did thing that the huge set of problems INS had needed to be straightened out before trying to reach for the stars. I had a vague understanding of such discussions prior to my arrival.

**TEAM 5 INS-RELATED QUESTIONS**  
**JAMIE GORELICK**  
**January 13, 2004**

1. **DAG job description.** Describe your responsibilities as DAG on a day to day basis. What did you view as your responsibility towards the INS? How did you carry out that responsibility? (INS weeklies- what value did these serve?) Would you request strategies and plans on various topics in the regular course of business? Did you ever reach below the Commissioner into the INS if you weren't satisfied with a response the Commissioner gave you?
2. **Prior experience in immigration law or management.** Prior to joining the Justice Department, had you any prior experience in immigration law or management?
3. **Priorities for INS.** How did you develop priorities for the INS; from the AG's interests, the White House, Congress, what INS sought? What were your priorities for the INS?
4. **Top 5 projects you worked on with the INS from March 1994 to 1997.**
5. **View of INS Role in counterterrorism.** From the mid 1990s to the end of the Clinton Administration, there was a significant increase in the DOJ's legal and financial resources dedicated to counterterrorism, due to both the President (PDDS 39 in June 1995 and PDD 62 in May 1998 of note) and Congress. The FBI, Customs, and Secret Service heads, among other sub-cabinet agencies are included in the PDD distribution, but not the INS Commissioner. The FBI, US Attorneys Offices, Office of Justice Programs, and the INS all were receiving a large increase in funding.
  - **What was your view of the INS role in counterterrorism? (Other than student tracking and JTTF participation.)** (DOJ and Congressional appropriations documents from the 1990s reflect priorities for the INS in securing the SW border from illegal migration and thereby increasing Border Patrol presence on the SW (notably not on the north), automating the agency in information available on the border and to benefits adjudicators, counternarcotics, and alien smuggling, punctuated by the Haitian and Cuban crises. Excluding and removing terrorists, and tracing students, is not reflected.)
  - **What was your view of the INS ability to address counterterrorism?**
  - **Do you think enough was done at the White House level to support the INS role in counterterrorism?**
6. **Intelligence and the INS Commissioner.** When did you become aware of UBL and other significant foreign terrorists as a threat to US interests? Did you then or later ensure that this information was shared with Commissioner Meissner?
7. **Office of Investigative Agency Policies.** You asked this office to look at "current procedures, policies and practices relating to aliens' entry into and departure from the US and "improve law enforcement capabilities in this area," noting the participation of aliens in the 93 WTC and the CIA shooting, where a variety of immigration benefits had been exploited by the alien criminals.
  - a. Do you recall if INS participated in this office? Do you recall who, or what the title of that person may have been?
  - b. Other than what Freeh outlined in his memo to you of September 26, 1994, were there any other documents produced by this office that may have had a bearing on INS policy?
  - c. Do you recall any conversations with Freeh where he asked for specific help in regard to the INS, in providing for JTTF INS positions, or follow-up on that memo?
  - d. Do you recall any conversations with Commissioner Meissner on findings from this office?
  - e. Was length of stay policy ever reviewed by the OIAP?

8. **Student Tracking.** Prior to the passing of the 1996 Antiterrorism and Effective Death Penalty Law in August 1996, you were pursuing INS recommendations on improving the compliance information and tracking of foreign students.
- What did you do to ensure that the INS was developing a strategy to acquire more timely and complete information on foreign students?
  - Did you ever see the CIPRIS Task Force report or other reports of the task force's progress? Did you ever request a briefing on the project?
  - Did you ever have a conversation with the Commissioner about progress of the task force? (Meissner doesn't recall any.)
  - Do you recall any interest in the project from the AG? From the White House?
9. **Entry-Exit.** The Visa Waiver agreement of 1988 signed between the DOJ and DOS required as part of piloting of visa waiver that INS develop an entry-exit system at ports of entry. In 1996, Section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 directed the AG to develop an automated entry and exit program to collect records every alien arriving and departing the US.
- What did you do to ensure that the INS was developing an entry-exit system?
  - Did you ever request a briefing on the project? Were you aware that the Commissioner considering automating the I-94 as the service's entry-exit project?
  - Did you ever have a conversation with the Commissioner about progress of the task force? Would you have had a conversation with Bob Bach about the system?
  - Do you recall any interest in the project from the AG? From the White House?
  - What about other automation projects, such as INSPASS (hand geometry at POEs); SENTRI (dedicated commuter lanes); IDENT (two fingerprint for recidivist activity on the SW border)?
10. **Exclusion of foreign terrorists.** PDD 39 in June 1995 directed the Attorney General to use "all legal means available" to exclude or otherwise remove from the U.S. aliens who pose a terrorist threat. Most of the individuals about whom you were briefed in connection with terrorism prosecutions were aliens using the legal immigration system to enter the U.S. illegally.
- **What did you do to follow up?**
  - **Did you use all legal means (ATRC, secret evidence, immigration laws as pretext)? If not, why not?**
  - **Did you consider asking Commissioner Meissner for a counterterrorism plan? If not, why not?** (There were CT plans that drifted at INS in the late 90s, but apparently she never saw them nor asked for them.)
11. **Use of immigration law in countering terrorism.**
- What did you see as the value of the use of immigration law in excluding and removing foreign terrorists?
  - What did you see as the issues in the use of secret evidence to remove an individual associated with terrorist activity?
  - What value did you see in the Alien Terrorist Removal Court? Was it an acceptable outcome to you that this court, with all its judges and procedures in place, was never used despite the extensive review of cases that took place since its inception in 1996?
12. **Consolidation of border agencies.** Documents indicate that the AG did not favor a consolidation of border agencies under the Department of the Treasury proposed in the early 1990's. What was your view of whether and how the INS should be restructured to make it a more efficient and accountable agency capable of meeting our nation's border security, economic, and humanitarian requirements?