

MEMORANDUM FOR THE RECORD

Event: Interview of Larry R. Parkinson

Type of event: Interview

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Special Access Issues: None

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Location: FBI Headquarters

Participants – Non-Commission: Robert Sinton, Assistant General Counsel, FBI

Participants – Commission: Senior Counsel Barbara A. Grewe, Professional Staff Member Len Hawley

Background

Parkinson graduated from law school in 1983. He spent two years in private practice and then clerked for a federal judge. He joined the United States Attorney's Office (USAO) for the District of Columbia as an Assistant United States Attorney (AUSA) in 1986. Except for a one-year stint as General Counsel at the Small Business Administration from 1988-1989, was at the USAO until December 1995 when he left to join the FBI as Deputy General Counsel. He was named General Counsel of the FBI in August 1997. He remained in this position until July 2002 when he left to become Deputy Assistant Secretary for Law Enforcement and Security at the Department of the Interior.

The 1995 Information Sharing Procedures

Parkinson was interviewed to have him explain the FISA process, the Attorney General's July 1995 procedures governing information sharing between the FBI and the Criminal Division, and the erection of walls between FBI agents working intelligence and criminal matters. Parkinson said that he became involved in these issues within one week of his arrival at the FBI when then General Counsel Howard Shapiro asked him to work on the Earl Pitts espionage case. The FBI was approximately four months into the undercover case against Pitts at the time. He worked on this matter until the intelligence case was shut down in December 1996 and converted into a criminal case. He described himself as being in the information sharing business but there were questions as to whether and how he could communicate with the Department of Justice's Internal Security Division (ISD).

Parkinson said that by definition he had to wear two hats in the Pitts investigation – intelligence and criminal. He said that it gave the agents on the case comfort to talk to

him about the case because of his prior experience as a prosecutor. He said he did not realize until he got to the FBI how highly FBI agents regarded prosecutors and their advice. He joked that the prosecutors were viewed almost as "gods." Thus, he felt his advice on the Pitts matter was highly valued by the agents. This was particularly because they could not go directly to the AUSA in the USAO in the Eastern District who was handling the criminal case.

Parkinson said that he quickly became disenchanted with the July 1995 procedures because they caused problems when he wanted to communicate with John Dion, who was head of ISD. He tried to have meetings every two to three weeks with Dion regarding the progress of the case but under the procedures they had to have someone from the Office of Intelligence Policy and Review (OIPR) present at their meetings. In this case Alan Kornblum was the OIPR "babysitter." They could not have casual conversations about the case. And when they did meet the conversations were very stilted. Parkinson said they were all, even Kornblum, in agreement that he could essentially do an information dump to Dion but there were significant issues regarding what Dion could say to him. Dion would not know what, if any, questions he could ask Parkinson. For example, could Dion ask whether they had passed any TS material yet? Parkinson said that while this may seem like an innocuous question, it could in fact be interpreted by agents that they should be passing TS material so that a life sentence would be involved. Thus, a prosecutor's casual questions could in fact convey a great deal of information. Parkinson said Kornblum "got queasy" when the Criminal Division would ask such questions. As a result, the Criminal Division hated having a minder during these meetings.

Parkinson claimed that everybody worked under the 1995 procedures for years in good faith. Agents would ask Kornblum whether they could ask various questions of the prosecutors. Parkinson said he personally pushed for regular briefings to the Criminal Division with complete information "dumps." He said then when cases neared the point when they would convert to a criminal matter, the prosecutor would be "ninety percent" there at the time the case transferred. In the Pitts case, Parkinson drafted an eighty-page memo for Freeh regarding the case in February or March 1996. He said it was in the form of a prosecution memo. He then updated it periodically. Thus, when the case was handed over to Randy Bellows for prosecution, he was provided with a comprehensive document laying out the facts, possible charges, and assessments of the case. This was important because Bellows was only given a week's notice prior to the take down of a case that had been going on for over a year. Thus, while this worked in this case because Parkinson was a former prosecutor and could do this within the strictures of the 1995 procedures, the wall between the FBI and Criminal Division in the usual case meant the prosecutors were at a distinct disadvantage because the hand overs were not so smooth. Although, Parkinson noted that the Criminal Division could have written such a document based on the information it had been given during the meetings, it apparently chose not to do so.

Parkinson said as a result of the Pitts investigation he learned about the procedures and the surrounding issues in the context of a real case. He then understood what the issues were, how they worked, and what possible solutions should be developed. This first

came up in April 1996 when the Southern District of New York (SDNY) sought relief from the 1995 Guidelines. Mary Jo White, who was the US Attorney, and Patrick Fitzgerald, who was the AUSA leading all of the al Qaeda matters, asked whether they could do a number of things. There was an internal tension between information sharing and the restrictions on advice the prosecutors could give to individuals directing the intelligence investigation. Parkinson said that agents were "scared to death" about the fact that the agents running the intelligence case in the Aldrich Ames case had almost blown the criminal case. [note: the 1995 procedures were created as a result of the issues in the Ames case.] The agents were worried about having to give notice to OIPR although they did not need OIPR's approval to talk to the Criminal Division. Parkinson said OIPR did not say no very often and claimed that the denials were always on timing issues such as do not have a meeting the day before the FISA was to be renewed. Although he admitted that by later in 2000 OIPR started making comments about if there were too many contacts with the Criminal Division that it would refuse to present the FISA application to the Court. OIPR then viewed itself as the gatekeeper and started exercising more apparent authority over the contacts. According to Parkinson, this message – threatening not to present FISAs if OIPR thought there had been too much contact – chilled people in the field. As a result, OIPR began to have a significant impact on the level of contact between the field offices and the USAOs.

Parkinson noted that the dialogue about the level and type of contact between the FBI and prosecutors always followed the espionage model. He noted that the Guidelines had been created in reaction to an espionage case. The problem he said was that the espionage model did not translate to the terrorism model. Espionage cases are very linear, he argued. One conducts the intelligence portion and then there is a clear, specific point when the case is converted into a criminal espionage case. There is a specific target going in and coming out. For example, he could have handed Bellows an indictment and a prosecution memo in the Pitts case. Terrorism cases on the other hand are a different world. In such cases, he believes the agents need to be talking regularly with prosecutors such as Patrick Fitzgerald and Dave Kelly in the SDNY about where the case is going. Parkinson said the end result is not known going into the case – will there be a prosecution for cigarette tax evasion, terrorist financing, or actual terrorist acts? Parkinson said then you throw in the overseas aspect of the cases into the mix and it becomes even more complicated.

Attempts to fix the Guidelines

As a result of these problems, a working group was formed to address them. This was just one in a number of groups that were formed over time dealing with information sharing types of problems. In the group that Parkinson participated in they addressed the 1995 Guidelines. Parkinson said Part B of the Guidelines – the part setting procedures for cases that did not involve any FISAs – never made any sense. He said the problems that Fitzgerald had with the Guidelines dealt with Part B. Parkinson said he put on the table in the working group that in his view terrorism cases did not follow the espionage model but he lamented that the DOJ Terrorism Section usually did not send a representative to the meeting and Main Justice did not force the Terrorism Section to

wrestle with these issues. Parkinson said in contrast Internal Security, which dealt with espionage cases, always had a person there and so did the Criminal Division. There was a weekly meeting with the working group but terrorism was never on the table because no representative was there. Parkinson said he was able to get Neil Gallagher, who as head of the FBI's National Security Unit oversaw espionage matters, to attend the meetings and talk about issues. On the other hand he could not get Dale Watson, who was head of the Counterterrorism Division, to attend such meetings.

Parkinson said in 1996 was the first effort to deal with the Guidelines issues and that was started through the meetings with the SDNY. As a result, Jim McAdams (then head of OIPR), Fitzgerald, Kornblum, and Parkinson spent a year trying to answer practical questions about what could and could not be done in meetings between the FBI and the Criminal Division/USAOs. As a group they provided ad hoc informal guidance to these questions. Parkinson said some of them wanted to send these questions and answers out to the field but McAdams wanted something more formal. [note: Parkinson said a copy of this advice is in his old files.] Then he left and it fell by the wayside. Jerry Schrader took over at OIPR and assumed the effort and then later Dan Seikaly was put in charge of the effort but in the end the effort to revamp the 1995 Guidelines fizzled out and did not go anywhere. Part of the problem was that people were distracted by the Campaign Finance and Wen Ho Lee investigation issues that became big fires that needed to be dealt with.

Parkinson noted that the problems with the FISA Court, including inaccuracies in a number of the FISA applications, led to the banning of Special Agent Michael Resnick from appearing before the Court. This event "spooked" people and as a result people became less aggressive. Parkinson said the Resnick situation was "a big deal" for a lot of people. Although he said there was no official policy change as a result of it, individual agents may have acted differently. He said they were concerned about being caught short by something they knew nothing about.

One of the ways they tried to deal with the situation where an agent was swearing to an affidavit that contained information he was not personally familiar with was to pilot a program where OIPR could have direct contact with the Special Agent in the field who was personally aware of the facts.

Internal walls

Parkinson was asked about the origin of the walls that were erected between FBI agents. Parkinson noted that the 1995 procedures only dealt with information sharing between the FBI and the Criminal Division and did not mention sharing between agents working a criminal matter and a related intelligence matter. According to Parkinson this was a loophole in the Guidelines. Parkinson said he wrote some pieces discussing why the exchange between fellow agents was different than agent to prosecutor. A key difference he noted was that when the agent went to a prosecutor he/she was generally looking for advice. This was not the case in agent to agent sharing. According to Parkinson, the internal walls eventually grew out of Judge Lamberth's orders, not from anything OIPR

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did. Lamberth became upset about how the FBI was handling FISAs, including the numerous inaccuracies regarding pending cases and other examples of sloppiness. Lamberth began to insist that every single contact with someone working a criminal matter and every piece of information that went over the wall had to be reported to him. But as he became more adamant about reporting incidental contact, the likelihood that something might fall through the cracks became higher and there was a higher likelihood there would be an error that would upset Lamberth. Beginning sometime in 2000 Lamberth began requiring anyone receiving FISA information to sign a certification that they understood the restrictions on sharing the information. This upset [redacted] because they did not operate the same way that the FBI did and wanted to be able to share information within the respective agencies and act upon it. Eventually Michael Woods in the FBI's National Security Law Unit drafted some internal procedures intended to ensure that agents confirmed information in the FISA applications. These became known as the "Woods procedures." Parkinson said Lamberth loved the Woods procedures.

As Lamberth created higher walls and placed more restrictions, he managed to bring the other judges on the Court along with his views. Significantly, because Lamberth was in Washington, [redacted] so he had great influence on the Court. By this time Alan Kornblum had left OIPR and was on the staff of the Court and he had been persuading Lamberth to impose more restrictions. This became an escalating cycle. Parkinson said that OIPR started going along with Lamberth's orders regarding the walls. Parkinson said OIPR shared Lamberth's view regarding the "primary purpose" test so it was willing to go along on the walls. Parkinson said then at the annual meeting of the whole Court, which he attended, one of the judges wanted to know why the Court could not just be informed of everything a prosecutor did on the criminal case, such as a daily log of everyone the prosecutor had on the case. Parkinson said the judge just did not understand how prosecutors work and why this was totally unfeasible, as well as inappropriate.

Parkinson said the internal walls began as essentially benign court orders but then they became institutionalized across the board. Parkinson said all of the problems that Lamberth was concerned about came out of the FBI's International Terrorism Operations Section (ITOS) but the restrictions were being applied to everyone. He said he tried to get the Court and OIPR to understand that if they were trying to fix problems in ITOS, they should not hobble everyone else as well. According to Parkinson these issues began in a very serious way in 2000. He said part of the problem was that people in ITOS had an attitude of "hey, we're saving the world here and you don't understand how hard we are working and small errors shouldn't matter." Then Lamberth barred Special Agent Michael Resnick from appearing in front of the Court due to errors in affidavits he had sworn to. This had a big impact on the agents and started to affect their willingness to apply for FISAs. Parkinson said the ITOS problems stemmed in large part from the fact that they were overworked and did not have enough resources. Parkinson said in the FBI it became a sign of weakness to ask for more bodies and help so ITOS did not. Parkinson said Tom Ainora, who was one of the National Security Law Unit (NSLU) attorneys working in ITOS, [redacted] The other attorney, Sherry Sabol, was also stretched too thin.

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Internally there was great concern about the growing walls. Parkinson said Marion "Spike" Bowman, who was head of the NSLU, had strong views that the primary purpose test [that the primary purpose of the FISA was to collect foreign intelligence as opposed to pursue a criminal matter] was not required and as a result the walls were not needed to preserve the primary purpose being intelligence. Parkinson said he agreed with Bowman on this point. Parkinson said that there were a number of people in NSLU who were squealing for a fight with OIPR on this issue. Parkinson said there were a lot of smart people sitting around and trying to fix the problems but it was tough with the combination of OIPR trying to maintain its Gatekeeper role, a strong judge who was trying to insert himself more and more into the process, and a lot of scared agents in the field who were worried their careers might be adversely affected.

Parkinson said that at one point Lamberth made himself the wall in al Qaeda cases. OIPR said that they needed to offer something up to Lamberth to appease him so they went along with Lamberth's plan. As a result, no information could be passed to the criminal agents without Lamberth's approval. In Lamberth's May 2002 opinion Lamberth made it sound like the walls were all OIPR's suggestion. Parkinson claimed this was a little disingenuous. He noted that there was a strong communication link between OIPR and Lamberth. In fact, Parkinson said that Lamberth knew in advance of the May 2002 case what OIPR's pleadings were going to say and in fact had had discussions with OIPR about their content and his reaction to them.

Walls in Summer 2001

Parkinson was asked about the internal walls in Summer 2001. He was not personally involved in any advice regarding the search for Nawaf al-Hazmi and Khalid al-Mihdhar. During that time he had lots of discussions with Sherry Sabol and Tom Ainora regarding the lack of resources and sloppiness in FISA applications but none regarding the circumstances of the search effort. When told that Dina Corsi alleged that NSLU had told her that no criminal agents could be involved in the search for the two men and none could participate in any interview if they were found, Parkinson said he would be shocked if anyone in NSLU gave such advice. He said there would have been no problem with a criminal agent hopping in on the search or participating in the interview. There was no FISA on these individuals so no internal walls would have been applicable.

Parkinson was asked whether Part B of the Guidelines would have controlled the situation. He said no. First, he noted that Part B did not apply to the SDNY. The Attorney General had granted a one year exemption from that provision in 1997 and renewed the exemption in subsequent years. Second, Part B only dealt with sharing with the Criminal Division. Any internal walls existed only in the wording of specific FISA Court orders. As there was no FISA in this matter, there was no governing order. Moreover, he argued, the FBI did not like walls and did not want walls and so would not be suggesting that one should be imposed without cause.

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The Sealed Bin Laden Indictment

Parkinson was asked why the first indictment of Bin Laden in June 1998 was sealed and why the White House/NSC people were not told about it. Parkinson was surprised that the White House claims it did not know but noted that there were big information sharing issues between the FBI/DOJ/White House that were the subject of another working group. He said that after the travel case where it was alleged that the FBI had been improperly used by the White House there was a policy implemented where the Deputy Attorney General's Office made the decision what could be given to the White House about ongoing matters.

Miscellaneous

In Parkinson's opinion, the Attorney General's decision to recuse Fran Townsend, who by then was head of OIPR, from all [redacted] did not affect the FISA process significantly. Although he noted that Townsend had a particularly good relationship with Dale Watson so the recusal inhibited things somewhat, he thought that Jim Baker, who was Townsend's deputy, did a good job filling the void and quickly earned Lamberth's respect. Townsend was recused because she had been so heavily involved in the [redacted]

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Parkinson said he did not understand why Townsend had allowed herself to become so intertwined with the process on those cases. He said that Lamberth was also concerned about the fact that the head of OIPR had become so involved with the prosecution.

When asked about the perception that FISA applications were being unreasonably delayed, Parkinson said that the FBI had done a detailed assessment of procedures on the process and the time it took at each step of the process. There was a perception that the delay was in the NSLU but they found that the applications were spending several weeks in the substantive units at Headquarters. They analyzed the number of days at each step.

Parkinson said that prior to September 11 there were several proposals to restructure DOJ to create a terrorism/national security division in an attempt to address wall issues. Parkinson said the wall issues became problematic sometime in 2000. He conceded they were somewhat self-imposed by DOJ and FBI because of the creation of and acquiescence in the 1995 procedures.

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