

MEFR 04018718

Memorandum for the Record

Event: Interview of Jeff Breinholt
Type of Event: On-the-Record Interview
Date of interview: 2/17/04
Date memo prepared: 2/18/04
Special Access Issues: None
Prepared by: Serena Wille
Team Number: 4
Location: DOJ headquarters
Classification: Secret
Present, non-Commission: Jeff Breinholt, Faith Burton
Participants-Commission: Doug Greenburg and Serena Wille

This memorandum provides a summary of the most important points covered in the above-entitled interview, but is not a verbatim account. The memorandum is organized by subject and does not necessarily follow the order of the interview. The witness provided all of the information in this memorandum during the interview, except where noted by square brackets. (U)

Background

Breinholt received his J.D. from UCLA in 1988 and, after spending two years in private practice, joined the Criminal Tax Division of DOJ in October 1990. In March 1997 he moved to the Terrorism and Violent Crimes Section. His move came before the first wave of FTO designations for which the TVCS was ramping up its staff. Violent Crimes was split off in 2/03 and became the Domestic Security Section. The remainder of the old TVCS was renamed the Counterterrorism Section (CTS) and was reorganized so that it mirrors the FBI's organization. Specifically CTS is divided into four units: ITOS I (al Qaeda), ITOS II (HAMAS/Hezbollah), Terrorist Financing (TF), and Policy. The head of CTS since 9/03 is Barry Sabin; the prior head was Jim Reynolds. Breinholt is the Deputy Chief of CTS and supervises the TF section, which consists of 8 lawyers and 3 detailees. (U)

Pre 9/11

When Breinholt arrived in TVCS, very little was going on with respect to terrorist financing. The recently passed Antiterrorism and Effective Death Penalty Act of 1996, creating the designation of "foreign terrorist organization" (FTO) and criminalizing material support of an FTO, had not yet become effective (and would not until 10/97 when the first set of FTOs were named). The focus was mainly on policy, rather than on litigation. There was one case per year, on average, and most were extra-territorial and worked with the relevant US Attorneys' Offices. Breinholt's first assignment was to try

60320-LP@FBI
LP@FBI
10/10/08

to find aliens in the U.S. to bring before the Alien Terrorist Removal Court; this process introduced him to intelligence and the battles at the FBI over intelligence sharing. (U)

Breinholt said that these internal FBI battles stemmed from concerns arising during the first Clinton administration that there was too much contact between the intelligence and criminal sides of the FBI. There was the fear that the criminal side would be accused of using FISA to evade the Title 3 requirements. Seth Waxman led a working group which in 7/95 created internal guidelines to reform the system. The agreement placed the onus on FBI intelligence agents to inform the criminal division of any crimes they discovered in the course of their intelligence investigations. Breinholt said the agreement was unworkable because it gave discretion to intelligence agents who had no incentive to share intelligence with the criminal side because it could jeopardize (1) their own professional standings and (2) the intelligence cases themselves because the FISA warrant would be at risk. As long as the FBI looked at terrorism in the United States as intelligence cases, the Criminal Division would only have a piecemeal view into the FBI counterterrorism efforts. This piecemeal view was formed through requests for FISA warrants, the 1995 guidelines, and FBI requests for advanced non-prosecution approval to use an asset suspected of other criminal activity. Breinholt said the Criminal Division was effectively shut out and could not pursue its mandate. Breinholt said that Randy Bellows' report on the Wen Ho Lee investigation includes a chapter that, in his view, provides an excellent history of the 1995 guidelines and their implementation.(U)

9/11 Classified Information

Breinholt's goal was to maximize the universe of cases the government could bring. In 2000 he was asked by Jim Reynolds who was part of the interagency counterterrorism group [the CSG] led by Dick Clarke to prepare a memo developing a program that if implemented would result in bringing cases that were not otherwise being brought. [Breinholt agreed to provide us with the document.] In preparing the memo, he was asked to assume unlimited resources were available – a “wish list” approach. Breinholt described the context of the paper as “not much was happening” and “lots of talent but no program.” His report included the nuts and bolts for prosecutions, including focusing on the “nature” of a particular financial transaction, i.e., the intent to conspire to raise money for terrorism, and not the end-recipient or ultimate use of the money. The next question was what kind of evidence would support a case. Breinholt's answer included FISA-generated evidence¹, public source information (consistent with the FBI guidelines), and law enforcement sensitive information (e.g., IRS information about 501(c)(3) entities). Breinholt said there was no issue getting access to relevant IRS information because the tax information of interest to him was not covered by the 26 USC 6103 tax confidentiality provisions. His proposal was to set up a unit in TVCS to

¹ Breinholt noted that FISA approval is based on there being an agent of a foreign power involved. An FTO constitutes a “foreign power” for this purpose.

develop this information, identify potential criminal matters, and get the FBI and IRS on board to pursue them as criminal not intelligence cases. The DC and PC reviewed and approved the proposal but Breinholt received no resources to pursue it. Also, the agencies were reluctant to share information and therefore reluctant to support his proposal. The Bremer Report was in the process of being developed and his proposals made it into the report. The Bremer Commission interviewed two colleagues from TVCS, but not Breinholt. (U)

Breinholt described the relationship between the Criminal Division and the FBI as dysfunctional. He said there were cultural and institutional barriers based on the career trajectory at the FBI. If an agent was a CT intelligence agent then promotion would be based on how well he or she ran a program, i.e., how many wires were up, etc. Intelligence agents would therefore avoid all contact with anyone on the criminal side because of the Wall and the fear of losing their FISA warrants, and would run intelligence cases almost indefinitely. He saw only about 2 or 3 cases passed over the Wall by "fearless" FBI agents between 1997 and 9/11. Ultimately the FBI had no end-game for intelligence cases; they would continue to monitor the subjects even as large amounts of money were sent overseas by groups with terrorist and jihadist links. This mindset drove the Criminal Division, which was prosecution-driven, crazy. The FBI responded that FISA intelligence was not sufficient evidence to bring a prosecution. Breinholt said DOJ used every opportunity with the FBI to suggest overcoming the Wall and cited two successful cases in this regard, the Charlotte Hizbollah cigarette case and the Dallas Infocom Hamas case.(U)

Breinholt listed the reasons the FBI did not pursue criminal terrorist financing cases. In addition to incentive issue based on concern about jeopardizing FISAs, and the 1995 investigative guidelines issue, as discussed above, the FBI's general prohibition on targeting religious organizations because of particular religious beliefs led to a reluctance to investigate mosques or religious organizations even if there were legitimate reasons to do so. A fear of civil liberties lawsuits led to erring on the side of steering clear of religious organizations. The problem was that there were bright line rules and people who liked and relied on them. Moreover, FBI lawyers had a second-class status (as non-agents) and their advice was often ignored.² (U)

During 2000, Breinholt and his colleague Roger Weiner participated in a working group on NGOs led by Coordinator for CT (State) Mike Sheehan. The group was focused primarily on coming up with a policy solution to a newly-discovered concern that USAID-qualified recipients were supporting terrorist organizations. The DOJ reps

² When asked about Robert Wright, the Chicago case agent on the Vulgar Betrayal investigation, Breinholt said he and was familiar with the case. He said that Wright viewed the FBI decision to defer to the intelligence equities at the expense of Wright's criminal case as an obstruction of justice. Breinholt disagreed, indicating that it was simply a decision about competing equities. Breinholt said that losing a criminal case to the intelligence equities happens sometimes and when it does he expects his prosecutors to accept the decision and move on, which Wright was unable to do.

came up with a proposal was that (1) grant recipients should certify that no money went from their organization to terrorists; (2) the USG should have the right to terminate the grant contracts for convenience; and (3) the vetting process (FBI/CIA) should be improved. There was a great deal of hostility at the State Department for these proposals. The working group's theme was that the USG could not claim to be taking terrorist financing seriously if it was unable to prevent itself from being involved (albeit inadvertently). The working group adopted Breinholt's proposal but it was only finalized after 9/11 and then implemented slowly. Some argued that the problem was not that significant. Breinholt countered by pointing out that HLF was USAID-qualified until a year before its designation by the USG for supporting terrorism; ultimately it required the intervention of U/S Pickering (State) to withdraw HLF's eligibility. (U)

Similarly Breinholt worked pre 9/11 on trying to get the IRS to be proactive on revoking 501(c)(3) status for suspect charities. IRS refused to take action and there were times when a designated entity retained its 501(c)(3) status. Congressional legislation was enacted just recently to revoke this status automatically upon a designation. (U)

9/11 Classified Information

Before, 9/11, the FBI was investigating terrorist financing, but almost exclusively in intelligence investigations. He could not evaluate the quality of the FBI's intelligence because the FBI was not sharing it with DOJ prosecutors. Because of the restrictions on using intelligence information, the FISA risks, and the professional risks to agents, FBI agents would have had to "violate every bone in their body" to share intelligence. (Before 9/11 no other agencies were conducting terrorist financing intelligence investigations. He tried, and is still trying, to get IRS more involved and has written a paper to this effect. [To be provided.] Customs was not involved at all. Breinholt summarized the situation as "facts without agents." (U)

Post 9/11

Breinholt said immediately after 9/11 he was drawn into the Moussaoui situation when the FBI tried to get a search warrant for Moussaoui's computer. TVCS did not know of Moussaoui before 9/11. Chertoff, Mueller, and others, quickly realized that

finances would be key in following the trail of the hijackers and three days after 9/11 told the FBI to establish the FRG using mostly white-collar crime agents. Breinholt became counsel to this group. The Saturday after 9/11 the FBI announced formation of this group and held an interagency meeting at the FBI; about 50 people from a variety of agencies showed up.³ FRG's initial mandate was solely to develop the financial portfolio of the 19 hijackers, which occurred more quickly than anticipated, and FRG was then ready to move on to developing cases. Breinholt said he finally had a group of knowledgeable criminal agents working on terrorist financing. (U)

After 9/11 it became clear, Breinholt said, that his ideas would resonate and he circled his 2000 proposal more widely. He was able to act on it, and went out and "begged" for resources from other DOJ sections (fraud, AFML, tax) and US attorney's offices (EDVA, EDNY). His goal was to take hard-nosed people, socialize them into reviewing and using intelligence, and encourage them to fight for criminal prosecutions in interagency circles. All were TDY initially and some were eventually hired by CTS/TFU. (U)

Information Sharing/ Prosecutions

Breinholt said that the Wall did not come down fully until 9/02 when the FISA review court overturned the lower FISA court ruling (5/02) striking down new guidelines issued pursuant to the Patriot Act. (U)

9/11 Classified Information

In fall 2001 Breinholt said they got a couple of nice hits. First, OFAC called and asked for assistance on the Al Barakaat designations. DOJ was able to time domestic searches and issuance of an arrest warrant to coincide with the OFAC designations. Second, HLF was the first HAMAS-affiliated entity to be designated. This designation was based on declassified historical FBI information. (U)

Breinholt continued to anticipate opposition from the FBI intelligence quarters. Internal FBI fights to reach a criminal end-game continued. Breinholt began the practice of preparing classified indictments so he could show he was ready to go once the information was declassified. Breinholt thinks there is an over-reliance on government-sourced information.. Private sources, such as think-tanks, should be used; the USG no longer has the luxury to refuse them. (U)

³ Breinholt said the group experienced some resources issues when UST formed Greenquest.

9/11 Classified Information

Breinholt believes CTS has to guard against devoting resources to less effective methods of disruption, like designations. Designations have run their course, in his view, because the low-hanging fruit has already been listed. CTS might be drawn into the designation process by either reviewing the FTO evidentiary packages or claiming a law enforcement interest in a potential target of designation. Designations could have a negative operational impact if the designated entity has a US presence. (U)

Breinholt claims that terrorist financing cases are not as hard to bring as many people claim. He gets very upset when he goes to conferences and hears prosecutors talking about the difficulties of prosecuting terrorist financing cases. Section 2339B does not depend on the intent by the donors to further violence. Prosecutors only need to show that charitable organizations are supporting an FTO. Moreover, contrary to what people frequently say, getting foreign financial records is rarely required. It is not necessary to show where the money winds up; instead, a conspiracy case can be made based on intent to fund foreign terrorists. The evidence to prosecute such cases often exists solely in the U.S. Frequently, the USG has electronic evidence revealing coded conversations, which might be corroborated by bank records. Overall, Breinholt said terrorist financing cases are not any tougher than any complex financial fraud cases, which he regularly preaches to anyone who will listen. (U)

Breinholt acknowledged the toughest cases involve charities sending money to their foreign counterparts, but still argued the cases are not that hard. In lieu of material support, fraud charges can be brought, as in the case of Arnaout. In the BIF case, the judge did not do the prosecution any favors. The press misunderstood the case too; the Santiago proffer was not rejected, only deferred. Arnaout's sentencing is going up on appeal, including the terrorist enhancement. Breinholt could not recall if that was a cross-appeal or the government's appeal. (U)

Most case agents have no incentives to understand Breinholt's perspective because their management has told them something different. AUSAs may not understand either. Breinholt is working to change the perception. For example, Pat Fitzgerald invited him to speak to AUSAs and agents in Chicago. (U)

Overall, the FBI is doing a good job in investigating terrorist financing. The pre-9/11 information-sharing issues have been addressed, and the FBI is willing to provide prosecutors with information. At the FBI field office level, access varies, and DOJ needs to make sure prosecutors fight for access. Breinholt noted that prosecutors have to be careful not to accept when the FBI refuses to provide information because "it will never be declassified." Fundamentally, the FBI now understands that terrorist financing investigations must have an end game, a major change from the pre-9/11 days. TFOS and ITOS represent a sea change because the leaders of these sections support the bringing of prosecutions. The addition of TFOS is a big improvement. Its agents are culturally pre-disposed to prosecution and bring the correct skill set for financial investigations. They also speak the language of accountants and auditors and do a good job at outreach to the private sector. On civil liberties, the new guidelines are more investigative-friendly and civil liberties groups are concerned. AUSAs need to be more involved in the operational planning process so that there is clarity on what the FBI can do and not do. Breinholt is also very impressed with the efforts of TFOS/FIAU/PEG. (U)

Interagency Issues/Current Agency Efforts

Breinholt participated in the PCC on terrorist financing until he decided it was not a good use of his time; there were too many people involved, and the meetings took up too much time. All PCC involvement by DOJ is now handled out of the AG's office. Breinholt's general view of the interagency terrorist financing cooperation is that it keeps peripheral players in the picture (i.e., those not involved in TF operations) which slows down the process so they can play catch up. For instance, an indictment might be held up so that the interagency group can evaluate whether to designate the individual or entity. Although there have been attempts to coordinate indictments and designations, the process is imperfect and the standards of evidence are different. The decisions about whether to bring in Treasury for a designation contemporaneous with an indictment are made at the Deputy level. In this regard, Breinholt believes the fear of leaks influences DOJ's willingness to involve Treasury. Breinholt thought the interagency should recognize that designations are not such a high goal that they should slow down the criminal process. He also is frustrated by the efforts of some interagency partners to grab headlines. He also thinks politically-inspired outreach to certain ethnic groups can be counterproductive if there is not proper vetting of the people officials are meeting with; a particular concern is loose comments that XYZ organization is "mainstream" when in fact no one has investigated the group or its . (U)

Breinholt said that he has heard rumors that Operation Cornerstone (run by ICE) has the same objectives as the old Greenquest but is being more careful about advertising its mission and pursuing it. His sense was that ICE is restyling cases to get around the MOU with the FBI. He said the old Greenquest claimed the 2339B cases were too hard, but wanted the headlines. As a result, they would portray cases as terrorist financing cases and then dismiss them. There is a GAO report out soon that analyzes the impact of

~~SECRET~~

the MOU on the respective agencies. He thinks the report is well done, brief, and accurate. (U)

In Breinholt's view, IRS/CID is not as involved as it could be. CID is setting up a program that will crunch information (both Section 6103 and other information) to develop terrorism links which it will then provide to the FBI. CID will be guided by open source materials and inquiries by FBI/DOJ. Tony Whitledge and [redacted] are running the program. IRS is not as much of a player because it reports to main Treasury, which was involved in the Greenquest issues and dislikes the thought of assisting the FBI with operations. (U)

Breinholt gave a positive evaluation to relevant regulated industries, like financial institutions. (He has been involved in DOJ's outreach efforts.) They have cooperated and contributed a great deal out of a sense of corporate responsibility. However, they do not usually want the full extent of their cooperation revealed. Non-regulated industries, such as hotels, are more cautious in assisting due mostly to public pressure from civil liberties and privacy rights groups. Interestingly he said that date-mining projects are not that controversial. On this score, Breinholt recommended the Markle report II as a good source of vignettes on how to handle information. (U)

Domestic Fundraising for Foreign Terrorist Groups

Breinholt did not really know the extent of domestic US fundraising for foreign terror groups. Assuming HLF (the largest charity with \$13 million in donations reported) were about 50% of national fundraising, then the entire problem would be less than \$30 million. Breinholt admitted that this guesstimate was not based in any facts. He had no quantifiable sense of AQ fundraising, but said that it was not like HAMAS/Hezbollah/MEK(Iran)/Real IRA which are bigger problems. Clearly there are AQ sleepers in the United States, but the extent to which they are raising money is not clear. (U)

Recommendations

Breinholt said it would be a major loss if the Patriot Act were rolled back. The two most critical provisions, from his perspective, are Sections 218 and 504. (218 changed the FISA standard from "primary purpose" to a "significant purpose" and 504 provides that FISA warrants are not jeopardized by communications between intelligence and criminal case agents.) As well, the AML provisions have been useful. (U)

Going forward, he would like to see some changes to Section 6103; UST tax officials have an overly restrictive view on when 6103 can be used and Breinholt has distributed a proposal to make it less restrictive. The FATF process is good, but strong bilateral relations with certain countries (e.g., Jordan and the Palestinian Authority) are key. With respect to staffing, Breinholt said that TFU would receive additional spots in the new budget, implying that staffing is not an issue. Finally, Breinholt would like to

~~SECRET~~

~~SECRET~~

see different standards of measurement, other than one based on the number of convictions. He threw out ideas like calculating the numbers of hours worked on terrorist financing; expanding the definition of investigations; creating a more seamless process between the agents and the prosecutors; better understanding how intelligence differs from evidence; and changing the FBI/DOJ culture so that individuals can disagree more aggressively without concern for career advancement. (U)

Three deliverables

JB 2000 memo re TF prosecutions
How the IRS can be more involved
NGO working group paper

~~SECRET~~