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MEMORANDUM FOR THE RECORD

Event:

Mike Dougherty, Director of Operations for Immigration and Customs Enforcement, Directorate of Border and Transportation Security, Department of Homeland Security discussing immigration internal enforcement organization, including investigations and intelligence.

Type of event: Briefing

Date: Tuesday, July 15, 2003

Special Access Issues: [none]

Prepared by: Janice Kephart-Roberts on July 23, 2003

Team Number: 5 (Border Security)

Location: Legacy INS Headquarters, 425 Eye St., Washington, D.C.

Participants - Non-Commission: Mike Dougherty, Director of Operations
Mark McGraw, Special Assistant to Dougherty
Dan Brown, DHS point of contact for Commission

Participants - Commission: Janice Kephart-Roberts
Betty Swope
Tom Eldridge
Susan Ginsburg

Note: no classification required

NOTES:

This briefing at old INS headquarters folds into one three briefing requests: no. 2 (ICE organization); no. 3 (alien smuggling and document fraud); and no. 6 (NSU #1 criminal investigative unit cases and responsibilities).

NOTE: Never got to document fraud; may need to follow-up after receive briefing from Bureau of Citizenship and Immigration Services fraud briefing. Did not receive any specifics on types of terrorist cases investigating; need to follow-up as well.

In the room were Mike Dougherty, Mark McGraw (special assistant to Dougherty and former RAC in Albany), all of Team 5, and PoC Dan Brown.

We were provided an “**ICE Overview Briefing for 9/11 Commission**” power point pamphlet, with organizational charts for the various components of ICE and their mission/management statements.

Mike Dougherty bio. Began as INS agent assigned to JTTF in 1992. Worked the '93 WTC case, landmark (Blind Sheik), Marzook (Hamas leader), and Phillipines airliner conspiracy. In 1997 became INS supervisor in the CTC where worked Khobar towers, became an FBI supervisor in East Africa where Al Quada and UBL were under his direction. Left INS in 1999 to KPMG financial services. Became Director Operations at BICE in March. Political appointment. On June 9, rolled out reorganization plan.

“Application of immigration enforcement is the most effective tool in preventing and disrupting terrorist operations in the US”- Mike Dougherty

Examples of cases where immigration violations intersect terrorist activity:

Najeem. '93 WTC Ryder truck driver. Had been out of status for 5 yrs. JTTF had to retrace Najeem's steps through job applications and student status and compare to WTC evidence Found consistent latents in WTC and on paper with ammonium nitrate.

Sheik Rahman.

Marzook. Hamas leader won the diversity lottery and subsequently removed.

9-11 Commission needs. Made verbal requests for:

- Immigration files on the 19; INS would have them.
- Success stories: immigration files on suspected terrorists being stopped and removed after secondary
- Any internal “lessons learned” documents emanating from 9/11.
Dougherty: whole operation of ICE is based on lessons learned.
- NSU Unit is compiling a history of unit. Get it.
- FLETC course curriculum for ICE agents.
- FDL 's alerts on Al Quaida stamps and seals; report on forensics* done on travel documents of 9/11 hijackers.

ICE Organization.

- 16,000 employees, second largest federal law enforcement agency with broadest investigative authority with combined legal enforcement powers of legacy INS, Customs, and Federal Protective Services (has police power in 50 states and D.C.)
- Management purpose multi-faceted: (1) prevent terrorist activity from being perpetrated in the U.S. by aligning structure with new threats and working with federal partners; (2) take advantage of synergies of customs and immigration authorities and competencies; (3) integrated, single chain of command whereby previously there were 3 regions and 33 district offices which were autonomous.

Investigations were not a priority; (4) represents ICE to DHS, Congress and 9-11 Comm'n.

- At HDQTRs, there are 1,000 employees.
- Technology. Management information system putting in place will provide (1) electronic case management; and (2) real time oversight.
- **Director of Operations** office responsible for oversight, strategic transformation, and training.
 - **Training at FLETC.** Now a combined customs/immigration curriculum. One of biggest problems is pay parity b/w GS-12 (INS) and GS-13 (Customs) for equally trained personnel. Costs about \$100K to train one agent, including pay during training, etc. Has reduced training time from 22 or 24 months down to 18 months; considers previous time too long in the classroom when services needed on the street. Attrition rate only about 6% last year; FBI attrition rising.
- **Intelligence.** About 300, including field operations. No longer under investigations. Using existing FIUs (?) with intel community. Will have a representative in TTIC "when it finally gets stood up." Embedding intel in human trafficking. Goal is to (1) acquire dissemination from intel community, as opposed to just finished intel; and (2) professionalize intel. Involved in Gitmo detainees? Not receiving direct information; have access to finished intelligence; not embed in process. FDL has put out excellent alerts on Al Qaeda seals and caches uses in passports. "*ICE probably gets more intel than any other agency in the world*". Information becomes intel when given context and other information applied to it.
- *Air & Marine.* 400 pilots (planes and boats) and 300 criminal investigators. All eligible to become special agents, as all have gone through criminal investigative school.
- *Federal Protective Service.* 2,100 to protect 8,000 federal facilities, including landmarks and bridges and 10,000 contract guards.
- *Detention & Removal.* 2,500 agents.
 - *9/11 Detainees.* Pursued 7,500 leads from persons detained post 9/11. 1200 arrested by INS. 750 approximately detained. 150 criminally prosecuted. What best to come out of these detainments? Significant number of people detained have no provable nexus to terrorists, but all were illegal aliens, either criminal or administrative. Some small %age did have nexus to terrorism. Most were fairly and consistently treated. ICE has effectively helped deter and purge US of terrorists. If ICE registered informant, can talk to us. If FBI or CIA, can't.
 - *On 9/11.* NYC aliens detained near WTC had to be moved to NJ through Ground Zero.
 - *Absconder Initiative.* One of biggest and time consuming initiatives for ICE. A six year plan to insure absconders are removed and not create new absconders. Goal is to insure removal of 300K aliens for whom final removal orders were issued, but never left US. Focus initially on 60,000 to 80,000 criminal aliens. Primarily using resources of LESC, which in

turn does checks via NCIC. Need to (1) make sure got right person—some w/o fingerprints or photos; (2) and then find the alien. Must cull through 2 sets of files: criminal and administrative immigration. Then have to seek absconders. Criminal prosecutions of absconders affect about 25% of populations in prison facilities. Using both LESC in Vermont and the Central States Command Center, which reports through the LESC, to work the initiative. The CSCC adds value by enabling officers to interview aliens via video conference, rather than previous labor intensive work of assigning agents to jails to conduct interviews. However, finding that the burden on system of picking up absconders for removal has a domino effect, causing more detentions, more prosecutors, more marshals, more airline resources.

Investigations.

- Director Investigations. Director is John Clark, former USCS Miami for 27 years. Ass't Director, Chuck DeMoore, former INS. 5,500 total (3,500 customs and 2,000 INS).
- Under Director Investigations is the Assistant Director and Foreign Operations Director.
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- Technology. Good news is that IAIP has Steve Cooper, but big problem remains in that the data ICE has is ineffective exploited. TECS is the most robust system and ICE is adopting it.
- To Director reports Investigative Divisions 1 – 5. All are run by Deputy Asst Directors.
 - *Division 1. National Security Investigations (Strategic, NSU, Compliance Enforcement).*
 - NSU was created in '97 as National Security Division; became National Security Unit in '98. NSU oversaw JTTF, CIA detailees and US military. Today, the NSU: (1) oversees greater than 200 detailees to JTTFs (customs and INS agents). By end of 2003, expects # to be 250 detailees. The NSU has 4 headquarters supervisors at FBI's Int'l terrorism Section; 2 at CIA, but more soon. Want detailees at CTC and TTIC as well. Pre-'93, a few agents with JTTFs; (2) disseminates actionable intel to specific offices of ICE for action and other agencies; (3) formerly also oversaw SEVIS and NSEERS. *Note: TIPOFF part of CBP, but TIPOFF available to ICE and ICE responds to hits at PoEs b/c of NSU link to intel community and JTTFs.*

- **Compliance Enforcement.** Responsible for SEVIS and NSEERS.
 - **SEVIS.** Problem has been in the technology, “in the pipes”. SEVIS policy developed by ICE and BTS. There is a SEVIS program manager with SEVIS assignments in offices throughout , but has yet to decide if will have SEVIS dedicated staff in field offices.
 - **NSEERS.** Registration is currently complete. Registrants are required to register at PoEs and upon exit.
- *Division 2.* Financial Investigations (Financial Infrastructure Protection, Financial Programs)
- *Division 3.* Smuggling/Public Safety Investigations (Commerical Fraud, Critical Infrastructure Protection, Human Trafficking and Smuggling, Contraband Smuggling, Identity & Benefits Fraud, Human Rights Violations).
 - In *Critical Infrastructure Protection* area is Operation Tarmac. Have ongoing call-in ability for employers after initial sweeping review of airport security workers for immigration violations. Also conducted one similar operation in re to national landmarks (includes bridges) where there exists specific and credible threats. HAZMAT industry is next; formed an IAIP working group on radiologicals, biologicals, chemicals, and gases; will target trucking and storage industries. Then prioritizing remaining critical infrastructures.
 - *Alien Smuggling.* Focus is on human trafficking, because most smuggling becomes trafficking (exploitation) at some point. Some smugglees pay smugglers 2 and 3 times to be reunited with family members or otherwise. INS at one time had a robust alien smuggling section, but in ebb and flow of last 10 years, deteriorated. Operation Southern Focus and Victoria Texas cases help shape vision on program. Four prong approach: (1) identify smugglers globally; (2) move virtual borders abroad; (3) work with foreign law enforcement; and (4) focus on dismantling the organizations. Phoenix is the crossroads for smuggling. Aliens are often held in safehouses, and then kidnapped by other smugglers and forced to pay again. Work with border patrol on these cases. Use mapping and smuggling intelligence. In the Victoria Texas case used the Air & Marine division, financial section and criminal investigators. 1st telephonic help was USSS; border patrol, mex criminal investigations; intel community.
- *Division 4.* Investigative Services (Cyber, LESC, Undercover Operations, Investigative Support, Forensic Document Lab, Asset Forfeiture, Special Operations, AMO and DRO Liaisons).

- LESC. Works with state and local governments at state/local request to cross check information on persons state/local have reason to believe is an alien. *See* Absconder Initiative section above for more on work assigned LESC.
- *Division 5. Mission Support.*

Today, less than 1900 legacy INS agents in the field. Inherited 11% deficit in special agents. Weren't hired because legacy INS used the \$ for other things.

- *Operation Tarmac.* Documented or undocumented aliens working in airports? Using immigration authority to cull through employees of airports. Any terrorist affiliations? Don't know and if so, to extent there are FBI open investigations, won't be able to get that information. Doing similar work in nuclear power plants (finding employer compliance high) and at national landmarks (includes bridges) where specific threat information exists. About to embark on a review of the hazmat industry (radiological, biologicals, chemicals, gases, trucking companies and storage); working with TSA in an IAIP working group. Then to prioritize other critical infrastructures based on threat information. Yesterday did a press conference on ICE finding 60 undocumented aliens at a federal facility.

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Memorandum

Event: Interview with Mike Dougherty

Type of Event: On the record interview

Date: 9/29/03

Date memo prepared: 9/30/03

Special Access Issues: None

Prepared by: Serena Wille

Team Number: 4

Location: Department of Homeland Security, 425 Eye Street, NW, Washington

Participants-ICE: Mike Dougherty, Director of Operations for Immigration and Customs Enforcement (ICE), Directorate of Border and Transportation Security, Department of Homeland Security; Victor X. Cerda, Acting Principal Legal Advisor, ICE; Mark McGraw, Special Assistant to Dougherty.

Participants-Commission: D. Greenburg, J. Roth, S. Wille

On September 29, 2003, we interviewed Mike Dougherty for approximately 1 hour and 20 minutes. This memorandum provides a summary of what we consider the most important points covered in the interview, but is not a verbatim account. The memorandum is organized by subject and does not necessarily follow the order of the interview. All information in this memorandum was provided by Dougherty during the interview unless explicitly stated or indicated otherwise.

Introduction

As a result of the prior Team 5 interview with Dougherty in July 2003 we did not request that he repeat his relevant career path for purposes of our interview. We noted

that we were aware that he had worked in government previously, including as an INS agent assigned to JTTF. Dougherty pointed out, because he thought it relevant for his current position at ICE, that he was most recently at KPMG in the financial services group advising financial institutions about compliance with the US anti-money laundering regime, the USA PATRIOT Act, and Sarbanes-Oxley legislation. He was appointed to his current position at ICE on March 17, 1999.¹

Memorandum of Agreement with FBI

As Dougherty had expressed interest in speaking to us to our colleagues in Team 5, we opened the floor to him to describe ICE's involvement in counter-terrorist financing. Dougherty said that soon after his appointment, DHS and DOJ entered into discussions about how to handle investigations into terrorist financing cases. These discussions resulted in a Memorandum of Agreement (MOA) which Dougherty said covered several principles. Namely, the President had designated the FBI as the lead agency on terrorist financing investigations but the U.S. Customs Service had 30 years of experience investigating financial crimes such as money laundering and eighteen months of experience investigating terrorist financing through its Greenquest operation.² Dougherty stated that a majority of experience in investigating financial crimes in US law enforcement lay with ICE. Dougherty pointed out that the MOA implementing procedures are equally important as the MOA in addressing the roles of the FBI and ICE

¹ [His other experience includes brief periods, from 1997- 1999, as the INS supervisor at CTC and as an FBI supervisor overseeing [REDACTED]

² [Customs was transferred from the Department of Treasury to the Department of Homeland Security, where it is now part of ICE. Greenquest was disbanded following execution of the MOA between DHS and DOJ.]

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with respect to terrorist financing issues.³ (See MFR from Bretzing interview on 9/9/03 for an FBI perspective on the MOA and related issues.)

Dougherty then described the joint-vetting unit established under the MOA, where the FBI and ICE examine terrorist financing leads to determine which agency would be more suitable to pursue the leads. (This process applies to both current and future investigations.) The joint-vetting unit is essentially a terrorist financing intake unit attached to the existing money laundering intake unit. The FBI has a supervisor and will ultimately have approximately 14 analysts at the joint-vetting unit. Dougherty said that leads come to the joint-vetting unit from the INS data input center and had previously been cleared with the intelligence community. In response to the leads, Dougherty said the FBI is to provide "responsive information", i.e., any information it holds about the subject matter of the lead, whether it is part of an open FBI investigation, etc., and then the two agencies weigh their relative equities. Dougherty remarked that both he and his counterpart at the FBI, Larry Mefford, receive recommendations on the disposition of the leads. These recommendations originated in the joint-vetting unit and were then further vetted internally.

Dougherty outlined the three possible dispositions: first, the investigation could be handled outside the JTTF structure and remain staffed and overseen by ICE; second, the investigation could be transferred to a JTTF but remain staffed by ICE and overseen by both ICE and the FBI; or third, the investigation could be turned over to the FBI which would coordinate with ICE as necessary. Dougherty is pleased with the joint-vetting process because it creates complete visibility of information between the FBI and ICE. It is his view that the FBI is structurally committed to sharing information with ICE.

³ [Note: We need to get a copy of these implementing procedures.]

Previously, Dougherty said the exchange of information was not “robust” enough. When Greenquest existed, Dougherty said there could have been better coordination between the FBI and Greenquest. In the early days after 9/11 the Greenquest intake process was overrun with leads. The result, according to Dougherty, was the clearance times were not as robust as desirable. Dougherty during his stint at the [New York] JTTF said he had no trouble getting information from the FBI but suspects that people outside the JTTF structure may have had the complaint that the FBI was not sharing enough information. He thought this complaint was likely based on cultural and procedural barriers. For more detailed information about the joint-vetting unit, such as staff levels, etc., Dougherty recommended that we speak to Marcy Foreman, Deputy Director, Division 2.

Of those terrorist financing investigations existing at Greenquest prior to the reorganization and the MOA, Dougherty said he has approved that one case be transferred to the relevant JTTF to be co-managed by ICE and the FBI and staffed by ICE agents. One case has been completely transferred to the FBI. Dougherty believes there are about a dozen investigations which were on-going prior to the reorganization and which are currently being vetted. No disputes about whether a case should be transferred to the FBI have been brought to his attention. Dougherty noted that it takes time to parse through the equities and there are unique legal issues involved, such as the type of searches, Title III vs. FISA, etc. Moreover, Dougherty noted that rarely is an investigation immediately identifiable as a terrorist financing investigation. The leads come in from a multiple of sources (SARs, informants, tips, undercover operations, other investigations) which complicates the balancing of the equities. Dougherty is of the view that ultimately it is extremely difficult to prove the last step: that the money went to a

terrorist organization or for a terrorist operation. Dougherty said, in the context of this discussion, that "it doesn't matter". [We understand this to mean that the simple fact that an investigation involves terrorist financing is not enough to transfer it over to a JTTF or the FBI. Instead, the agencies' equities should be determinative.] In Dougherty's view it is most important to follow the intelligence coming out of a case and to follow leads internationally as well.

Dougherty said that another result of the MOA is the assignment of ICE agents and analysts to the FBI. [REDACTED] an ICE agent, is staffed as a deputy to Dennis Lormel, head of TFOS. Approximately 300 ICE agents are assigned to JTTFs and many others are working at FBI headquarters. According to Dougherty, this increases the transparency of information between the agencies.

Operation Cornerstone

Dougherty also described Operation Cornerstone, which was launched after the MOA was signed and officially announced on July 8. The Systematic Homeland Approach to Reducing Exploitation (SHARE) program was also announced on July 8. Dougherty said that Operation Cornerstone is an effort to focus ICE's authorities and capacities on systems and infrastructure, by identifying vulnerabilities in the US financial system which could be exploited by terrorists.

As such, Dougherty said that several steps are being taken by ICE to develop this expertise. First, ICE liaisons have been assigned to all major financial institutions⁴; second, ICE is developing subject matter experts for industry subgroups (e.g., mutual funds, broker-dealers); third, special agents in charge are required to establish company

⁴ Dougherty noted that companies selling commodities are included in ICE's use of the term "financial institutions" and "industry", and are so included in the Memorandum.

baselines for the current industry infrastructure (e.g., what are substantial businesses, internal transaction reporting requirements, sources of information); fourth, ICE is developing typologies based on how systems are currently being exploited; this process includes linking various criminal organizations to the typologies and seeking to dismantle these organizations; finally, ICE will share the information it learns through this process with the industry to gather industry feedback on the typologies and learn from relevant industry experience.

Although FinCEN also develops typologies and is, according to Dougherty, vital to efforts to disrupt terrorist financing, only ICE has agents in the field and their data are key. FinCEN currently assists ICE with interpreting SAR data. Dougherty plans to work with FinCEN so that the goals of Operation Cornerstone match those of FinCEN. Ultimately ICE's work, according to Dougherty, will improve financial institutions' responses on SARs, which will benefit FinCEN's efforts. ICE is also unique because it can integrate its other disciplines, such as alien smuggling, with its efforts against terrorist financing. Dougherty hopes the development of terrorist financing typologies will mirror the success of INS in developing typologies on money laundering.

Dougherty anticipates that Operation Cornerstone will result in the following dividends: first, it will offer a return to the financial institutions on their significant investment in the SAR regime by changing the way that ICE interacts with the financial industry; second, it will add value to SARs; and third, it will force terrorist financing proceeds into industry channels which are more subject to enforcement (such as bulk money transfers over which ICE has a good handle). According to Dougherty, this last

dividend will result from changing the way that the industry operates based on the information developed by Operation Cornerstone and shared with the financial industry.

With respect to how ICE plans to communicate with financial institutions as part of Operation Cornerstone, Dougherty said there are three mechanisms. First, there are everyday contacts between the ICE liaisons and their institution counterparts. Second, Tripwire, an electronic newsletter, will begin publication on October 1, and then be distributed quarterly. This newsletter will highlight high-level trends and notable results from SARs and announce training and conferences run by ICE's National Training Unit. Finally, the SHARE program, run jointly by ICE and the Secret Service, will conduct semi-annual conferences with leaders from financial institutions in order to share the typologies, receive industry feedback, and the like.

Dougherty is sensitive to the industry's concern that they have heard it all before from the government in terms of receiving more feedback. So far, he has been very satisfied by the industry response to Operation Cornerstone. Dougherty admits that it will be a challenge to reach the smaller players in the industry. ICE has focused on the bigger players because changes they make in their operations and structure will have a bigger impact on the flows of terrorist funds, and these players have already committed significant resources over the years to reporting requirements and compliance. ICE's own resource constraints pose challenges in reaching the smaller industry players. Dougherty is of the view that once ICE better understands how the money flows and who the money remitters are it will then be able to anticipate how smaller industry players might be vulnerable. Dougherty notes that money service businesses (MSBs) are extremely vulnerable but present special issues for ICE. Dougherty said that it is very

difficult to find out who owns MSBs. This information is essential to gaining access to traffic flows. Once this information is gathered and a determination made as to what is the important data, Dougherty said that the next step would be to convince the MSBs to look at transactions differently.

Legal Authorities of ICE

Dougherty remarked that ICE's legal authorities are "pretty awesome" and that ICE has all enforcement authorities not otherwise reserved to other agencies. At some point, Dougherty believes that regulatory regime will need to be revisited once ICE gets its arms around the problems. As an example, Dougherty noted that insurance companies are not subject to reporting requirements because they were never thought to be used for money laundering. This may need to change. Additionally, Dougherty said there might need to be an information-sharing campaign about the vulnerabilities ICE discovers through Operation Cornerstone. Dougherty does not believe that the public sector needs greater authority to share information with the private sector. His view is that the public sector does not share enough information with the private sector under current law, and the law should not be changed to expand information-sharing abilities until the full extent of the current law is used and found to be lacking. He stated that industry players are sharing more information among themselves, which is positive.