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MEMORANDUM FOR THE RECORD

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Location: United States Attorney's Office, Southern District of Florida, Miami

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Participants – Commission: Senior Counsel Barbara A. Grewe, Consultant Lance Cole

Background

Paylor began working for the government as a law clerk in the U.S. Attorney's Office (USAO) in Denver, Colorado. In November 1988, after passing the bar exam, she became a Special Assistant U.S. Attorney (AUSA) in the Southern District of Florida. After a time she became a regular AUSA. Initially she worked on appellate matters. She later moved on to the Major Crimes Section, then the classified information team for the Manuel Noriega prosecution, and then the Economic crimes section to work FIRREA bank cases. In approximately 1991 she went to the Special Prosecutions Section. Then from approximately 1996 until 1999 she worked on public corruption cases. In 2000 she went on a one-year detail to the Office of Intelligence Policy and Review (OIPR) at Main Justice. In May 2001, she was appointed as the deputy chief of the Major Crimes Section in the Miami USAO. In September 2001, she became Chief of the National Security Unit. This unit was originally an ad hoc group that was not officially designated as a unit until approximately January 2002. This unit became a section in September or October 2002. She remains the chief of this section.

Working with the FBI on Counterterrorism Matters

Prior to September 11, 2001, counterterrorism matters were handled by the USAO on a case-by-case basis. There was no formal unit in the Miami USAO to work with the FBI's Miami Field Office (MFO) Joint Terrorism Task Force (JTTF). She, however, had worked on an IRA gunrunning case and two Cuban counterintelligence cases with the JTTF. Senior Litigation Counsels in the USAO were assigned to handle such important matters.

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On September 11, 2001, the United States Attorney, Guy Lewis [now Executive Director of the Executive Office for United States Attorneys], sent to the MFO two talented AUSAs who had second-chaired the IRA and the Cuban espionage cases. It was quickly decided that every office needed to have a national security point of contact so Paylor was also sent to the MFO that night. Paylor said there was an enormous flow of work coming in almost immediately, including for example, there were search warrants coming out of Boston and information on the hijackers' Florida addresses that needed to be investigated. She said the volume of work quickly made it clear that more AUSAs were needed so those who already had security clearances were sent over. Eventually 20-25 AUSAs, out of 120 in the USAO, were assigned to the MFO. They worked in shifts around the clock. The level of activity at the FBI was also affected by the anthrax matter because the first death was in Florida in October 2001. Eventually the work became more project or event related. The process moved from an evidence collection effort for the September 11 case to one of trying to determine whether there were still people here who knew about the hijackers and the plot.

A command center was set up at the MFO. All of the Federal law enforcement agencies had desks there. The process needed coordination so the work was divided into three categories – financing, telecommunications, and general leads. Paylor said she tried to keep up with whatever the AUSAs at the MFO were working on. She reported back to the USAO Criminal Chief and the First Assistant. She was also involved with coordination of efforts among USAOs in other districts. She said there was extensive reporting back to Washington on what was being done.

Field Office Reorganization

Paylor said after awhile the MFO reorganized and added more counterterrorism squads. The USAO did not have any input into the MFO reorganization. She said the USAO mimicked this transformation and by January 2002 had a distinct unit formed to handle this work. Under the new structure there are ten AUSAs district-wide assigned to MFO with two AUSAs assigned to each MFO squad. She noted, however, there is some overlap among squad assignments. She said that it is accepted from the “top down” that the USAO should be involved with the MFO’s counterterrorism work. She believes that the commitment of time and senior personnel to the MFO post-9/11 has demonstrated to the MFO that the USAO cares about the relationship. She said being that closely involved with MFO is important, she said “you must be present to win.”

She also said that the AUSAs are “making a great effort” to become more knowledgeable about terrorism – both from formal training programs and self-training. Part of this training has included bringing in speakers such as Jim Stinson from Orion who spoke on the intelligence world and pre-incident indicators; Joe Navarro, who is retired from the FBI; and Peter Bergen. She said they are trying to do more proactive, preventive work now such as security for task forces, coordination with local authorities, et cetera. In bringing criminal cases against individuals who may be terrorists, there is usually some type of link that is helpful such as a source or involvement in a particular group that may help prevent something from happening.

The USAO has an analyst assigned to the MFO JTTF. This individual has had experience with handling classified information plus has a variety of analytical tools. Originally this individual was assigned to squad T-4 [Note: the intelligence squad] but the analyst is now assigned to squad T-1 [Note: the Usama bin Laden/ al Qaeda squad] to work on a particular matter. Main Justice has assigned one analyst position to each district to work on counterterrorism matters. The USAO has also received funding for additional AUSAs – eight in Miami, one in Fort Lauderdale, and one in West Palm Beach.

MFO has established a seaport security group that has members from every agency to look at issues related to the Miami and surrounding seaports. She said the effort to create a similar group for the airport is not as far along as the seaport effort.

She said the new policy is that no rock will be left unturned. She said that MFO takes the new “urgent reporting” requirements that require certain types of information to be promptly communicated to FBI Headquarters seriously. The USAO has requested that MFO inform the USAO of anything it reports back to FBI Headquarters so that people here know about it before it comes back down through the Department of Justice chain.

Paylor argued that there needs to be direct connectivity between MFO and USAO, including a classified communication system that would permit direct communications between the two offices. She said they should be able to email each other. She said there is a SCIF (Secure Compartmentalized Information Facility) in the USAO.

Legal Issues

Neither Paylor nor Stamm could recall any instances post-9/11 but pre-Patriot Act where intelligence information could not be obtained or leads pursued because the legal authority was lacking. Paylor said the biggest issue from the Patriot Act was the ability to share FISA (Foreign Intelligence Security Act) information with criminal prosecutors. She believed that there had been great confusion about sharing information that had not been obtained through the FISA process. Paylor said immediately after September 11 she met [redacted] representatives assigned to MFO. She was not aware of any instances in Miami where intelligence information or FISA take could not be shared with the FBI and the AUSAs, whether FISA or otherwise. She believes that the Patriot Act clarified that FISA take can be reviewed by the USAO; it is only its use that requires approval from OIPR. Paylor estimated that 98 percent of what was being considered by the AUSAs were criminal issues, not FISA and/or intelligence issues.

After September 11, the USAO went through all open MFO 199 [Note: this is the FBI’s designation for terrorism intelligence matters], both preliminary investigations and full field investigations, to see if anything had been missed or there were any possible criminal cases that could be brought as a result of the information in the files. This review did not lead to any criminal prosecutions.

Pylor said the AUSAs do not advise agents regarding compliance with the Attorney General Guidelines. She said the Guidelines have been modified for counterterrorism matters. She has not read the new FBI guidelines regarding the creation of 315 cases. [Note: 315 is the FBI's new single designation for counterterrorism matters that covers both intelligence and criminal matters. It replaces the prior designations that split intelligence cases (199) and criminal cases (265).]

Paylor believes the USAO brings a lot to the FBI's counterterrorism investigations. For example, she said that they can help draft FISA applications. She says this advice would be on substance, not form, because OIPR attorneys are the experts on form. She said they also bring an extra pair of eyes to the matters and may be able to make some links that were missed by others. They also bring a prosecutor's view to timing and strategy decisions, including the timing of interviews and which tools should be used. She believes that the commitment of the AUSAs helps the agents do more. As an example she cited a case where there was a person of interest who they do not want to leave the country. The USAO brought a marriage fraud case against the individual as a means of keeping the person here. She also noted that forfeiture matters can be used effectively to achieve results.

Main Justice asked the USAO for a "wish list" in connection with legislative proposals. She believes the request came in an email to the USAO but is not certain. She believes that a written response was sent to Main Justice. She believes that this was part of a nationwide effort that others USAOs also participated in. After receiving the request, Paylor spoke with FBI agents regarding their concerns. The primary request was for administrative subpoena authority in terrorism matters.

FBI's Ability to do Counterterrorism

Paylor believes that the FBI is not yet where it needs to be regarding counterterrorism and said that it will take time for it to get there. She believes the MFO ASAC (Assistant Special Agent-in-Charge) for counterterrorism [Note: Frank Figliuzzi] is doing a "tremendous job." She said she does not know how he is doing it. MFO has decided that counterterrorism and counterintelligence together is too much for one ASAC to manage so these responsibilities have been divided between two separate individuals. She said MFO has moved really good agents to counterterrorism. She noted, however, that FBI Headquarters has "sucked up" some of MFO's really good agents. She does not believe it is necessary to create a separate domestic intelligence agency. She believes that the talent is there within the FBI but they have to be given the ability to do their jobs and it has to be made easier for them to do it.

She noted that having other agencies' representatives on the JTTF is helpful in terms of liaison. She said that traditionally the USAO and MFO have had a good relationship with INS, particularly with Bill West who worked closely with the JTTF. [Note: Bill West has recently retired from the INS.]

She also believes these relationships are very important for dealing with state and local authorities. She noted that the president's brother [Governor Jeb Bush] has created his own state domestic security task force that is being led by the Broward County Sheriff. She believes this effort will be successful because it is taking a lead role in areas where the JTTF is not focusing, such as training for first responders. There is also a state system called "Threatnet" that is a means for reporting from local police departments, such as reports from "beat cops," to reach the JTTF. She believes information is being pushed up from the state and local departments but it still needs to be pushed down to the state and local departments.

Paylor indicated there is also an Attorney General's Antiterrorism Advisory Council (ATAC).