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Subject: Memo concerning Exec. Br. "minders"

Part(s):  2 Memo on Minders' conduct 10-02-2003.doc application/msword 23.27 KB 

Dan and Steve,

Per your request, attached is a memorandum concerning the effect of minders' presence at our interviews. The memorandum also contains suggested principles to govern minders in the future.

Best regards,
Gordon

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TO: Dan Marcus and Steve Dunne
FROM: Kevin Scheid, Col. Lorry Fenner, and Gordon Lederman
DATE: October 2, 2003
RE: Executive Branch Minders' Intimidation of Witnesses

During the course of Team 2's and other teams' interviews, we have observed three trends concerning the Executive Branch's representatives ("minders") at those interviews.

First, agencies lack a common understanding of the minders' purpose in our interviews. Agencies' perspectives include: (1) minders as agency representatives, ensuring that Commission staff abide by the agreement between the Executive Branch and the Commission on the substantive scope of the Commission's inquiry; (2) minders as participants in the interviews, answering questions directed at witnesses; (3) minders as agency monitors, reporting to their respective agencies on Commission staff's lines of inquiry and witnesses' verbatim responses; (4) minders as counselors, for witnesses to consult during interviews; and (5) minders as recorders of action-items generated during interviews, such as transmitting documents offered by witnesses to Commission staff. We suggest that Dan Levin give the agencies a common understanding of the purpose of minders' presence at interviews.

Second, minders have on occasion answered questions directed to witnesses. Critical to our investigation is determining not just how the Intelligence Community is supposed to function pursuant to its policies and procedures but also how the Intelligence Community functions in actuality. When we have asked witnesses about certain roles and responsibilities within the Intelligence Community, minders have preempted witnesses' responses by referencing formal policies and procedures. As a result, witnesses have not responded to our questions and have deprived us from understanding the Intelligence Community's actual functioning and witnesses' view of their roles and responsibilities.

Third, minders have positioned themselves physically and have conducted themselves in a manner that we believe intimidates witnesses from giving full and candid responses to our questions. Minders generally have sat next to witnesses at the table and across from Commission staff, conveying to witnesses that minders are participants in interviews and are of equal status to witnesses. Moreover, minders take verbatim notes of witnesses' statements, which we believe conveys to witnesses that their superiors will review their statements and may engage in retribution. We believe that the net effect of minders' conduct, whether intentionally or not, is to intimidate witnesses and to interfere with witnesses providing full and candid responses. Moreover, the minders' verbatim note-taking facilitates agencies in alerting future witnesses to the Commission's lines of inquiry and permits agencies to prepare future witnesses either explicitly or implicitly.

We request that you raise the subject of minders' conduct with the Executive Branch in order to prevent minders from comporting themselves in these ways in the future. Perhaps the attached statement of principles might help define minders' roles and conduct. We look forward to your assistance. Thank you.

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Principles Governing Executive Branch Representatives Attending Interviews
Conducted By The National Commission On Terrorist Attacks Upon The United States

- (1) The purpose of having Executive Branch representatives ('minders') attend interviews is to ensure that Commission staffs' questions are within areas of inquiry negotiated between the Administration and the Commission. If a minder believes that a question violates that agreement, then that minder should object immediately.
- (2) Only one minder may attend an interview even if the witness served in multiple agencies. Commission staff may question such a witness during one interview about his or her service at any of those agencies. The Executive Branch shall ascertain prior to each interview whether the witness has served in more than one agency and shall decide which agency shall send a minder to attend the interview.
- (3) The Ambassador or the Deputy Chief of Mission shall designate the minder for consultations between Commission staff and foreign governments representatives outside of the United States. The Department of State shall designate the minder for such consultations within the United States. Commission staff may invite other Executive Branch representatives to attend such consultations.
- (4) Former employees of the Executive Branch may elect to have a minder from the Executive Branch attend their interview.
- (5) Commission staff shall begin the interview at the scheduled time and need not wait for a tardy minder.
- (6) Minders may not answer questions directed at the witnesses. A minder wishing to convey information to Commission staff shall do so in writing after the interview.
- (7) Minders shall keep a 'low profile' during the interview, such as by positioning themselves behind the witnesses so that the witnesses cannot see them. In any event, minders shall sit where directed by Commission staff.
- (8) Minders may not take verbatim notes of interviews, and Commission staff will so inform the witnesses.
- (9) If a witness wishes to consult with the minder, then the witness may request a momentary pause of the interview.
- (10) If a minder violates any of these provisions, then Commission staff may suspend and reschedule the interview and bar that minder from any future interviews.

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TO: Dan Marcus and Steve Dunne
FROM: Kevin Scheid, Col. Lorry Fenner, and Gordon Lederman
DATE: October 2, 2003
RE: Executive Branch Minders' Intimidation of Witnesses

During the course of Team 2's interviews and interviews led by other teams, we have observed three trends with respect to the Executive Branch's 'minders.'

First, agencies lack a common understanding of the minders' purpose. Agencies' perspectives include: (1) minders as agency representatives, ensuring that Commission staff abide by the agreement between the Executive Branch and the Commission on the substantive scope of the Commission's inquiry; (2) minders as participants in the interviews, answering questions directed at witnesses; (3) minders as agency monitors, reporting to their respective agencies on Commission staff's lines of inquiry and witnesses' verbatim responses; (4) minders as counselors, for witnesses to consult during interviews; and (5) minders as recorders of action-items generated during interviews, such as transmitting documents offered by witnesses to Commission staff. Confusion surrounding the minders' purpose leads to ambiguity regarding the rules governing minders' conduct and, as we detail below, has permitted minders to intimidate witnesses and to obstruct the Commission's inquiry, *whether intentionally or not.*

Second, minders have on occasion answered questions directed to witnesses. Critical to our investigation is determining not just how the Intelligence Community is supposed to function pursuant to its policies and procedures but also how the Intelligence Community functions in actuality. When we have asked witnesses about certain roles and responsibilities within the Intelligence Community, minders have preempted witnesses' responses by referencing formal policies and procedures. As a result, witnesses have not responded to our questions and have deprived us from understanding the Intelligence Community's actual functioning and witnesses' view of their roles and responsibilities.

Third, minders have positioned themselves physically and have conducted themselves in a manner that we believe intimidates witnesses from giving full and candid responses to our questions. Minders generally have sat next to witnesses at the table and across from Commission staff, conveying to witnesses that minders are participants in interviews and are of equal status to witnesses. Moreover, minders take verbatim notes of witnesses' statements, which we believe conveys to witnesses that their superiors will review their statements and may engage in retribution. We believe that the net effect of minders' conduct is to intimidate witnesses and to interfere with our ability to elicit witnesses' full and candid responses. Moreover, we believe that the minders' verbatim note-taking facilitates agencies in alerting future witnesses to the Commission's lines of inquiry and permits agencies to prepare witnesses either explicitly or implicitly.

Sure/other
We request that you raise the subject of minders' conduct with the Executive Branch in order to prevent minders from comporting themselves in these ways in the future. Perhaps the attached statement of principles might govern minders' conduct. We look forward to your assistance. Thank you.

help define roles of

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- (2) Only one minder may attend an interview even if the witness served in multiple agencies. Commission staff may question such a witness during one interview about his or her service at any of those agencies. The Executive Branch shall ascertain prior to each interview whether the witness has served in more than one agency and shall decide which agency shall send a minder to attend the interview.
- (3) The Ambassador or the Deputy Chief of Mission shall designate the minder for consultations between Commission staff and foreign governments' representatives. ~~outside of the United States. The Department of State shall designate the minder for such consultations within the United States.~~ Commission staff may invite other Executive Branch representatives to attend such consultations *at their discretion.*
- (4) Former employees of the Executive Branch may elect to have a minder from the Executive Branch attend their interview.
- (5) Commission staff shall begin the interview at the scheduled time and need not wait for a tardy minder.
- (6) Minders may not answer questions directed at the witnesses. A minder wishing to convey information to Commission staff shall do so in writing after the interview.
- (7) Minders shall keep a 'low profile' during the interview, such as by positioning themselves behind the witnesses so that the witnesses cannot see them. In any event, minders shall sit where directed by Commission staff.
- (8) Minders may not take verbatim notes of interviews, and Commission staff will so inform the witnesses.
- (9) If a witness wishes to consult with the minder, then the witness may request a momentary pause of the interview.
- (10) If a minder violates any of these provisions, then Commission staff may suspend and reschedule the interview and bar that minder from any future interviews.

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*(Can we say something
not one agency or
minder & also where
we're Team's' interests)*

Dan and Steve –

As we discussed with you, during the course of our interviews Team 2 has observed two trends with respect to the Executive Branch's 'minders.'

First, the minders have on occasion answered questions directed to the witnesses. Critical to our investigation is determining not just how the Intelligence Community is supposed to function pursuant to its policies and procedures but also how the Intelligence Community functions in actuality. When we have asked witnesses about certain roles and responsibilities within the Intelligence Community, minders have preempted the witnesses' responses by referencing formal policies and procedures. As a result, witnesses have not responded to our questions and have deprived us from understanding the Intelligence Community's actual functioning *& the interviewees' knowledge of their role & responsibilities.*

Second, the minders have positioned themselves physically and have conducted themselves in a manner that we believe intimidates witnesses from giving full and candid responses to our questions. Minders generally have sat next to witnesses at the table and across from Commission staff, conveying to the witnesses that the minders are participants in the interviews and are of equal status to the witnesses. Moreover, the minders take verbatim notes of witnesses' statements, which we believe conveys to the witnesses that their statements will be reviewed by their superiors and may result in retribution. We believe that the net effect of minders' conduct is to intimidate witnesses and to interfere with our ability to elicit witnesses' full and candid responses. Moreover, we believe that the minders' verbatim note-taking facilitates agencies in alerting future witnesses to the Commission's lines of inquiry *and* permits agencies to prepare witnesses either explicitly or implicitly, and will give agencies the opportunity to prepare responses to what they foresee are the Commission's likely conclusions and recommendations.

*kind,
see
back*

We request that you raise the subject of minders' conduct with the Administration in order to prevent minders from comporting themselves in these ways in the future. Perhaps the following statement of principles for minders' conduct might be useful to you in this regard:

- (1) Minders are present at interviews in order to ensure that Commission staff's questions are within areas of inquiry negotiated between the Administration and the Commission. If minders believe that a question strays into an area outside of that agreement, then the minder should raise an objection with the Commission staff. The staff and the minders will then discuss the objection, and the staff may suspend and reschedule the interview if the matter is not resolved immediately.
- (2) Minders may not answer any questions directed at witnesses. If a minder answers a question directed at a witness, then (a) the staff will suspend and reschedule the interview, and (b) that minder will be barred from attending any interviews. If the minder has information that he or she wishes to convey to the staff that may help the staff, the minder shall do so in writing after the interview *or off-line.*
- (3) Minders should keep a 'low profile' during the interview, such as by positioning themselves behind the witnesses so that they are not seen by the witnesses. The

- They should also be on time

- minder shall sit where directed by Commission staff and shall move if the Commission staff objects to a minder's placement.
- (4) Minders may not take verbatim notes of interviews, and Commission staff will so inform witnesses at the beginning of each interview. If the minder does take verbatim notes, then (a) the staff will suspend and reschedule the interview, and (b) that minder will be barred from attending any interviews.
 - (5) If a witnesses wishes to consult with the minder, the witness may request that the interview be paused momentarily.

We look forward to your assistance on this matter.

Thank you.

Third, there seems to be different understandings among the agencies of the "role of the minder", which relates to the two issues preceding. This ~~includes~~ ^{includes} from "Agency Representative" (role?); "Attorney" for witnesses to "consult"; and "Action Item" recorder for agencies (not "Agency rep." though) ~~as~~ ^{as} well as others.

So we need to say:

- Domestic Executive Branch interviewees: DoT - one minder possible
- Foreign governments: Amb or senior State Dept can designate one person (Teams may invite another).
- Former exec branch: interviewee can elect to have an agency "minder" (or is it "lawyer").

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First, agencies lack a common understanding of the minders' purpose. ^{in our interviews.} Agencies' perspectives include: (1) minders as agency representatives, ensuring that Commission staff abide by the agreement between the Executive Branch and the Commission on the substantive scope of the Commission's inquiry; (2) minders as participants in the interviews, answering questions directed at witnesses; (3) minders as agency monitors, reporting to their respective agencies on Commission staff's lines of inquiry and witnesses' verbatim responses; (4) minders as counselors, for witnesses to consult during interviews; and (5) minders as recorders of action-items generated during interviews, such as transmitting documents offered by witnesses to Commission staff. ~~Confusion surrounding the minders' purpose leads to ambiguity regarding the rules governing minders' conduct and, as we detail below, has permitted minders to intimidate witnesses and to obstruct the Commission's inquiry - whether intentionally or not.~~ ^{We suggest that Dan Levin give the agencies a common understanding}

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