

**DEPARTMENT OF JUSTICE
INTEROFFICE MEMO**

DATE: November 27, 2001

TO: Charles Pritchard, Chief Counsel, Criminal Justice Division

FROM: Hardy Myers, Attorney General

SUBJECT: Assistance to the United States Department of Justice
In Conducting Anti-Terrorism Interviews

Background

On September 11, 2001, at least 19 coconspirators killed over 4,000 people, including themselves, in coordinated attacks in New York and the District of Columbia. Since then, the Federal Bureau of Investigation (FBI) and other federal law enforcement agencies have been engaged in an effort to identify and apprehend surviving conspirators of those attacks and conspirators planning future attacks.

The investigation has revealed that some suspects who died September 11 lived in the United States for years before the attacks. On October 11, 2001, the FBI announced the names of 22 persons indicted for terrorist acts and whose whereabouts were then unknown to investigators.¹ On the same date, the FBI announced that it had “reason to believe that there may be additional terrorist attacks within the United States and against U.S. interests overseas over the next several days.”² The identity of the person or persons suspected of planning further attacks has not been publicly released.

On November 9, 2001, the United States Department of Justice (USDOJ) directed all United States Attorneys to coordinate a project in which the state, local and federal members of the Anti-Terrorism Task Forces previously formed by each United States Attorney will be asked to interview “a large number of people as to their knowledge of terrorist elements.” According to the United States Attorney General, interviewees “were not selected in order to single a particular ethnic or religious group, or to suggest that one ethnic or religious group is more prone to terrorism than another.” No interviewee was selected because of suspicion of any criminal activity by the interviewee. Instead, each is a potential source of information, in the judgment of USDOJ, about the activities of the

¹ For a summary of the announcement, see <http://www.cnn.com/2001/ALLPOLITICS/10/10/inv.most.wanted/index.html> (viewed November 25, 2001).

² For the complete text, see <http://www.fbi.gov/pressrel/pressrel01/101101.htm> (viewed November 25, 2001).

identified and unidentified coconspirators in the September 11, 2001 assaults or in future terrorist activity.

The United States Attorney for the District of Oregon, Michael Mosman, has invited Oregon Department of Justice (Oregon DOJ) investigators and Oregon Department of State Police (OSP) officers to participate in the federal interview process.

Conclusion

Oregon law does not prohibit Oregon DOJ criminal investigators from conducting such interviews as part of a criminal investigation to identify and apprehend people who have conspired, or are conspiring, to commit crimes. Oregon DOJ participation in the federal project will not violate Oregon law if conducted as discussed below. The same conclusion applies to OSP.

Action Requested

In compliance with applicable Oregon law, please assist the federal government with the interview process.

Discussion

Oregon DOJ has received two different documents relating to the interview project: (1) a narrative description of the information to be sought by the interviews prepared by USDOJ and entitled “Guidelines for the Interviews Regarding International Terrorism” (narrative description); and (2) the list of interview questions prepared by USDOJ. The latter document is entitled “ATTF (Anti-Terrorism Task Force) Suggested Topics for Interviews.” Because the specific issue is whether investigators may collect or maintain information elicited by specific questions, we have focused our analysis exclusively on the exact questions to be asked. Because our focus is on what investigators will ask, we have not analyzed the legality of an interview as described by the narrative description.³

The interview questions are to be asked in the context of the criminal investigation described. Most of the questions relate to the interviewee’s knowledge of the events of September 11, 2001 or of various aspects of terrorist activity. At the request of USDOJ in Washington, D.C., Oregon DOJ will not publicly release the specific questions its investigators will use to conduct interviews.

³ The City Attorney for the City of Portland has informed us that his prior advice to the Portland Bureau of Police was based on the narrative description and not the actual interview questions which he received only later. Further, we understand from the City Attorney that the questions to be asked by investigators have greatly narrowed the concerns raised for him by the narrative description.

In any event, Oregon DOJ is not authorized by Oregon law to provide legal advice to local law enforcement agencies. Although an Attorney General’s legal opinion may assist attorneys for local law enforcement agencies with their own legal analysis, the decision about legal advice given to local law enforcement agencies rests entirely with the attorneys for those agencies.

In consultation with its criminal procedure experts, Oregon DOJ has applied three statutes to the specific questions investigators are to ask. These statutes are ORS 131.615, relating to the authority to detain individuals; ORS 181.850, relating to the use of law enforcement resources in immigration law matters; and ORS 181.575, relating to the collection and maintenance of certain data about subjects suspected of crime.

Although Oregon DOJ has concluded that state investigators may ask the specific questions reviewed, an interview is a dynamic process that can take many unexpected turns. Given the important social values protected by each of the relevant statutes, all state investigators assigned to assist in the federal project should review anew the limitations imposed by these three laws before they begin their work.

ORS 131.615: Detention

Before detaining a person, ORS 131.615 requires that an investigator have an individualized suspicion that a crime has been committed and that the person to be detained committed that offense. Since none of the individuals to be contacted is suspected of any offense, the interview does not involve detention and interview participation should be purely voluntary; the interviewee must be free to terminate the contact at any time. State investigators conducting these interviews should ensure the interviewee understands that responding to interview questions is voluntary.

ORS 181.850: Immigration Matters

ORS 181.850 prohibits use of Oregon DOJ or OSP resources to detect or apprehend “persons whose only violation of law is that they are persons of foreign citizenship residing in the United States in violation of federal immigration laws.” Such detection or apprehension is not the purpose, or even a purpose, of the interviews. We have been given no reason to believe any person to be interviewed has violated any law, including any federal immigration statute. If, in the course of the interview, the state investigator develops a suspicion the interviewee may be in violation of federal immigration laws, the investigator should ask no further questions relating to such possible violation. The investigator may later report his or her information about possible immigration law violation to the Immigration and Naturalization Service for whatever action that agency may choose to take.

ORS 181.575: Data Collection About Subjects Suspected of Crime

ORS 181.575 also sets boundaries on state investigative activity. That law provides:

No law enforcement agency [including OSP and Oregon DOJ] may collect or maintain information about the political, religious or social views, associations or activities of any individual, group, association, organization, corporation, business

or partnership unless such information directly relates to an investigation of criminal activities, and there are reasonable grounds to suspect the subject of the information is or may be involved in criminal conduct.

The first limitation is that the information must directly relate to an investigation of criminal activity. As described above, interviews will be conducted as part of an ongoing investigation of the September 11, 2001 crimes and conspiracies to commit future crimes. All interview questions relate to that ongoing investigation, and all information sought by the interview questions is relevant to it.

Second, ORS 181.575 prohibits collection and retention of data about a person's political, religious, or social associations or activities unless the person to whom the data relates is suspected of a crime. For example, the law prohibits government from compiling a dossier on persons who associate to lawfully oppose governmental policies. The law, however, does not prohibit collecting or maintaining information about peoples' "views, associations or activities" in every circumstance but only as to views, associations or activities that are "political, religious or social" in nature. The interview questions do not seek to collect information about the political, religious or social views, associations or activities of the interviewee or any other person; they seek to determine whether the interviewee has information relevant to the criminal investigation of the September 11, 2001 attacks and of conspiracies to commit future terrorist acts.

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