

MORE ON THE YEAR-LONG PURSUIT OF MOHAMED MOHAMUD

Teddy did a diary this morning on a newly-reported detail in the case of Mohamed Mohamud—the Portland man accused of attempting to set off a bomb. The FBI had contacted him a year earlier than originally disclosed. The first contact with Mohamud the complaint describes took place in June 2010, after Mohamud was prevented from boarding a flight to Alaska.

On June 14, 2010, MOHAMUD was contacted at Portland, Oregon International Airport after he attempted to board a flight to Kodiak, Alaska. MOHAMUD was not allowed to board the aircraft. Shortly thereafter, MOHAMUD was interviewed by the FBI.

Shortly thereafter, an undercover agent contacted Mohamud, leading up to the July 30, 2010 meeting that was not taped.

An FBI Undercover Employee (UCE1) contacted MOHAMUD in June 2010 under the guise of being affiliated with UA1 and UA1's associates. MOHAMUD and UCE1 ultimately agreed to meet in Portland on July 30, 2010.

But a filing submitted yesterday shows that the Oregon State Police got a report on him in November 2009, after which an FBI agent named Bill Smith started contacting Mohamud.

As noted above, the government seeks to characterize a November 2009 interaction with Mohamed as "an unrelated matter." Resp. at 17. While the direct contact with Mohamed appeared to involve only the Oregon State Police (OSP), the FBI was clearly involved behind the scene.

As the government has only provided minimal discovery related to the FBI's involvement, with much of it redacted, Mohamed cannot assess the extent of the information the FBI gathered and subsequently used in crafting its sting operation.

What the discovery does show is that the OSP immediately notified the FBI upon receiving a complaint about Mohamed, despite the fact that the substance of the report would ordinarily not result in FBI involvement. Although the redactions in the FBI report prevent the defense from understanding the full scope of the FBI's role, it appears that agents met with OSP officers prior to contact with Mohamed and were involved with the subsequent interview. OSP then requested consent to image Mohamed's computer, which was provided to an FBI analyst within hours. Seven days later, agent Bill Smith began contacting Mohamed and soliciting his participation in violence against the West. A short time later, the FBI analyst copied specific information from Mohamed's computer and provided it to a fellow agent. The analyst did not write a report of his actions until a year later.

Other filings make it clear that the OSP polygraphed Mohamud at this point and suggests the search of his computer was consensual.

At first, the government didn't admit that "Bill Smith" worked for the government (and it remains unclear who he works for). Only after the defense confronted them with that fact did they concede he was, but they claimed these earlier contacts have no connection to this case.

The discovery provided up to [the discovery deadline of February 15] and after included no indication that Bill

Smith was a government agent. The government must possess the paperwork and reports that are necessarily generated by a government agent who contacts a citizen for such investigative purposes. If not for fortunate defense work, this exculpatory fact would have continued to be suppressed. It was only by backtracking through voluminous emails, and clearing out hundreds of lines of distracting code, that the defense was able to understand Bill Smith's apparent connection to the government. Once confronted with the defense conclusions, the government admitted Bill Smith acted as a government agent. However, the conscious determination by the agency that Bill Smith should not be disclosed to the defense as an agent, purportedly because the government does not believe the information is helpful to the defense, establishes that the government alone should not be permitted to determine what is exculpatory without this Court's supervision and instruction.

While the government claims this contact was discontinued in May 2010 (a month before the contact they claim started this investigation), Mohamud continued to email "Smith" until August 2010.

Bill Smith had e-mail contact with defendant beginning in late 2009 and continuing through May 2010. The contact with Smith did not relate to the facts of this case, and was discontinued by the government. Defendant, however, on his own continued to contact Smith through August 2010, after the government had ceased contact with him, by forwarding Smith e-mails, including one that supported violent jihad.

The fact that the government delayed admission of these earlier contacts also means the government has not disclosed the extent to which this earlier contact was used to tailor conversations with Mohamud.

[T]he undercover agents clearly used information from surveillance activities in approaching Mohamed. One obvious example is that agent Bill Smith attempted to ingratiate himself with Mohamed by recommending an online publication based on the government's belief that Mohamed had connections to the publication.

While it appears that Mohamud was under surveillance before the first contact with the OSP (the complaint cites some emails he had with someone in Yemen August 2009), the earlier contact raises a whole bunch of questions about what led the government to pretend to follow-up on his emails in June 2010.