

Testimony of Federal Officials Regarding FBI Joint Terrorism Task Force

Portland City Council Informational Hearing

February 15, 2011¹

ON ACCOMODATING LOCAL CIVILIAN OVERSIGHT:

Portland Deputy City Attorney Ellen Osoinach –

“My first question revolves around the oversight system. Is it fair to say – if the Council decided to assign a Portland Police Bureau officer to the JTTF – we would be forced to rely on the federal oversight system, and the way the federal government has balanced the need for security against the need to protect civil liberties?”

US Attorney for Oregon Dwight Holton –

“The answer is no on a couple of levels. First, oversight of Portland – of local – officers remains with the local contributing bureau – if you will, Washington County or Portland Police. To that end, *we’re prepared to make sure that local authorities get -- that you, and that any citizen oversight board gets -- the information it needs to take any kind of oversight action. . . .*”

Portland Deputy City Attorney Ellen Osoinach –

“But isn’t it true that there is certain information that is not accessible? Even the terms of your own MOU make it clear that there is some information that can only be released with the permission of the FBI and only to people that have the appropriate security clearance so *doesn’t that leave open the possibility that our own civilian oversight system could be thwarted by your classification system* or at least that we have to seek your permission to implement our own civilian oversight system?”

FBI National General Counsel Valerie Caproni –

“It is true that the way that our MOUs work requires that FBI agrees to the release of FBI information leaving the FBI. And that’s appropriate. I think that every agency has their control of their own information.

¹ Partial transcript, emphasis added. Full, four-hour hearing featuring only expert testimony available at: <http://www.portlandonline.com/index.cfm?c=49508&a=338704>. Subsequent to this hearing and per the later testimony of U.S. Attorney Holton, the FBI suggested Portland’s desire to address concerns about local police participation in the JTTF outside of the context of an MOU. Instead – with the assistance and endorsement of the federal government – the Portland City Council unanimously adopted legislation on April 28, 2011 ensuring state and local standards, local supervisory accountability, civilian oversight and some transparency would apply to local police participation in the JTTF. See Portland City Council Resolution #36859, now City of Portland Binding City Policy BCP-PSF-7.01.

The reality is – I think the concern about classification is a little bit misplaced. What a police officer does in the course of work on the JTTF is unlikely to be classified.

Classification has to do with – generally – it’s going to be the way we collected information, or either because it was collected from a sensitive technique or it was collected from a human source that we don’t have control over, or if it’s stuff that reveals diplomatic activities or the like. But, a police officer or an FBI agent who’s conducting an investigation as part of the JTTF – his or her sort of individual activities are unlikely to be classified – the activities themselves.

Having said that – we have never – *I’m sort of at a loss because in the seven and a half years that I’ve been at the Bureau we’ve had no problem with providing local police departments and local oversight mechanisms the information they need in order to provide appropriate oversight for their employees consistent with the need to keep classified information classified. It just hasn’t been a problem. And, therefore I think we can work it out in terms of the information you need.*

And, again, sort of the day-to-day ‘what is your police officer doing?’ – that information is not going to be classified. Or, the likelihood of it being classified is exceedingly remote. And, I think to the extent it were we could work out a way to provide you with the effective information that you needed without providing the classified fact.”

.....

ON ACCOMODATING LOCAL LEGAL OVERSIGHT:

Portland City Commissioner Amanda Fritz –

“So what is the resource for the officer if he or she is concerned that the FBI is asking him or her to do something that may not be in conformance with city or state rules?”

US Attorney for Oregon Dwight Holton –

“... If the city wanted to work an arrangement whereby they could have access to the city attorney as the part of a working out of an MOU that’s something we’d be more than willing to consider.”

.....

ON THE DIFFERENCE BETWEEN J.T.T.F. DOMESTIC AND INTERNATIONAL TERRORISM SQUADS:

FBI National General Counsel Valerie Caproni –

“Domestic terrorism investigations would not have classified information in them and they would not use classified techniques. So there would be differences in the sort of information they would be privy to on the DT (Domestic Terrorism) Squad.”