

DENVER AND THE WEST

Lawyers question decision to talk with FBI

By Felisa Cardona The Denver Post

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Three experienced criminal defense lawyers on Monday questioned the strategy of the attorney for Najibullah Zazi, saying that allowing a client to talk to the FBI for 28 hours was at best "risky" and at worst would lead to a criminal charge.

"He shouldn't have done it," lawyer Daniel Recht said of Zazi's attorney, Art Folsom. "He literally walked his client into prison. In fact, this fellow would not be in custody now but for the advice of his attorney."

Recht would have advised Zazi not to talk to the FBI until Recht had a full understanding of what Zazi may have done, what he might be questioned about and what the FBI might have on wiretaps.

Zazi and his father, Mohammed Zazi, are each charged with making false

statements during interviews with the FBI about the younger Zazi's possible links to al-Qaeda and bombmaking notes on his laptop.

"Sometimes on rare occasions, you let your client talk to the FBI, but only after you have done all of your homework," Recht said.

A spokeswoman for Folsom said the attorney was faced with unspecified unique circumstances that persuaded him to let his client answer questions.

"Given the situation and the information received by Mr. Folsom, he judged it appropriate to communicate with the FBI," said Wendy Aiello. "It's quite easy to be critical when you are not in the immediate situation. This case is far beyond the standard that most attorneys find themselves in."

Lawyer Harvey Steinberg said clients need to be vigorously questioned by their attorneys before a decision is made to cooperate with investigators.

"I am not in a position to judge what he did or why he did it other than to say I have never done it," Steinberg said. "Because unless I know that it will never be used against him and there is some kind of agreement it would not be used against him, I would not allow it."

During interviews with suspects, the FBI doesn't always record statements, putting the word and reputation of agents up against a



Art Folsom, the attorney for Najibullah Zazi, talks to the news media Monday after his client's first court appearance. (Judy DeHaas, The Denver Post)

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client's if a criminal charge of making false statements to the FBI follows.

"They can twist what you said," Recht said, "but more significantly, they already have hours of wiretaps, and they know exactly what you said, and they have it all transcribed."

Once the suspect makes a statement that contradicts the wiretaps, the FBI can pursue a charge.

If Zazi insisted on talking to the FBI, Recht said, Folsom should have urged him otherwise.

"It's sort of like saying, 'I want you to accompany me into the lion's den and I want to get eaten by the lions,' " he said. "As an attorney, you would hopefully have better client control than that."

Attorney David Lane said there is no clear-cut rule about allowing clients to talk to law enforcement, but it is an extremely risky move.

"Everybody thinks they can talk their way out of the handcuffs, but very few can," Lane said. "There is an expression among defense attorneys, 'When there is no crime, there is 1001,' the code section charging people with lying to the FBI."

Lane said that the false-statement charge has to be regarding a material fact pertinent to the investigation and is often subject to interpretation.

"Getting immunity before talking is a good idea," Lane said. "But they will tell you even an immunity agreement does not stop us from charging you with false statements or perjury. You have to be very, very careful."

Felisa Cardona: 303-954-1219 or fcardona@denverpost.com

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If this guy is a terrorist (he is not charged as one and the rest is from anonymous sources) then everyone should be glad he was stopped. But right now he is only charged with lying to the FBI, a charge that only arose because his attorney let him speak to the Feds. As the much more experienced attorneys in the article point out, if not for that decision, the defendant would not be facing the charges he is in jail for. Letting your client get set up like this is very very very rarely a good decision. The public might not much care about this guys rights, but his lawyer had no other job and for now it does not

really look like he did so.



Brad | 1:12 PM on Tuesday Sep 22



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[quote="jeanie"]I'm really grateful that at least *The Denver Post* is interested in why this investigation is unfolding this way. (Thank God for traditional media at moments such as these.)

There seems to be something fundamentally wrong here, and I hope they don't end up throwing out the Constitution entirely.

Thanks for great reporting, Ms. Cardona. And thanks to the attorneys who were courageous enough to comment. **LOVE** the quote about "When there is no crime, there is 1001."

I'm worried about this guy's rights, and I think we should all be worried.

Thanks again!

Jeanie Straub  
Denver[/quote ]

Jeanie,  
Why should I be worried?  
I don't have bomb instructions on my laptop.  
I don't have video of Grand central station on my phone.  
I don't fly to Pakistan or Afghanistan.  
I certainly have never had training from al-Qaeda.  
Or received weapons from them.  
Have you even read the evidence that is piling up on him?  
I'm sure there is more to come.

The only thing I worry about is what this guy and his friends we're up to.  
Thank god he had the lawyer he did.



Troy L | 12:26 PM on Tuesday Sep 22



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Thanks for great reporting, Ms. Cardona. And thanks to the attorneys who were courageous enough to comment. **LOVE** the quote about "When there is no crime, there is 1001."

I'm worried about this guy's rights, and I think we should all be worried.

Thanks again!

Jeanie Straub  
Denver



Jeanie Straub | 12:00 PM on Tuesday Sep 22



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Note to all possible criminal defendants: YOU CANNOT TALK YOUR WAY OUT OF IT. And any lawyer that tells you that you can is looking out for publicity, not your best interests. If you are facing an FBI investigation, find a lawyer with years of experience who specializes in major criminal defense and federal court, not a guy who mainly advertises for DUI's and small claims cases.



Harold B | 11:28 AM on Tuesday Sep 22



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Hmmm, a defense attorney whose name is also that of a notorious prison! I'm just sayin'...



TH | 10:57 AM on Tuesday Sep 22



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