

DID THE US COERCE A MIRANDA WAIVER (AGAIN) BY THREATENING FAMILY MEMBERS?

The NYT reveals that the lawyer for Manssor Arbabsiar has suggested she will challenge the voluntary nature of Arbabsiar's 12 days of waiving his Miranda rights.

Mr. Arbabsiar's lawyer, Sabrina Shroff, said in a recent interview that she intended to seek a hearing on whether the "consent was freely given, or whether it was unlawfully extracted," given the gap in time between her client's arrest and his initial court appearance on Oct. 11. "There has to be a deep concern about the voluntariness of consent to that long a period of detention," she said.

Her comments provide an early look at the defense's legal strategy in a case that has gained widespread attention because of questions over Iran's alleged role, and because of the wealth of information that prosecutors said they obtained from Mr. Arbabsiar after he waived his Miranda rights.

[snip]

The interrogation of Mr. Arbabsiar was cited in a sealed, four-page letter that the office of Preet Bharara, the United States attorney in Manhattan, sent to the court on Oct. 6, while questioning was under way. The letter said Mr. Arbabsiar had "without counsel, knowingly and voluntarily waived his Miranda rights and his right to a speedy presentment" each day, and had signed

waivers to that effect.

The letter, now public, described how agents were “vigorously and expeditiously pursuing leads relating to the defendant’s statements,” and said “regular access” to Mr. Arbabsiar had allowed them “to promptly verify with him the accuracy of information developed in the investigation.”

The story led me to check the docket, only to discover they’ve unsealed Arbabsiar’s first complaint. I’ll have much more to say about the unsealed complaint (including the weaknesses it shows in the US case that this was an attack primarily directed against the US).

But for now, the complaint suggests one means they used to coerce a man who had insisted on legal representation in at least four prior brushes with the law to waive his Miranda rights in a case that risks putting him away for life: by threatening to take action against his brother.

As I have long noted, the fact that the person described as “Individual 1” in Arbabsiar’s amended complaint was not charged is a puzzle. After all, that person allegedly served as a middleman in a conspiracy to kill the Saudi Ambassador. So why wasn’t he charged or sanctioned by the Treasury?

Well, this original complaint may provide a hint why the person wasn’t charged and also why Arbabsiar waived his right to a lawyer even though he had never done so in the past.

CS-1 and ARBABSIAR then discussed how ARBABSIAR would pay CS-1. ARBABSIAR asked CS-1 what bank he planned to use, and CS-1 stated that he would give ARBABSIAR “an account number.” At a later time during the same conversation, ARBABSIAR stated that the “money is [in] Iran,” and that he [ARBABSIAR] had received a call indicating that the

money would be at his brother's house. When ARBABSIAIR called his brother, "he [ARBABSIAIR's brother] said he [ARBABSIAIR's brother] had received "the money at nine in the morning."

As I've speculated might be one possibility, in other words, the FBI had evidence that put Arbabsiar's brother squarely in the middle of the alleged conspiracy. And that fact is one of the things the government tried to hide with its unusual sealing. {Update: as I'll explain later, I think Arbabsiar's brother wired the money through Europe, which would seem to implicate him to a greater degree.]

While we don't know for sure that Arbabsiar "cooperated" to protect his brother, we do know that is the government's favored tactic for making people cooperate. To get Najibullah Zazi to cooperate, they charged his father. To get the UndieBomber to cooperate, they got his family involved (using who knows what kind of coercion over Abdulmutallab's father, the banker). To get Faisal Shahzad to cooperate, the Pakistanis rounded up first Shahzad's father-in-law, and then his father and (presumably) his wife and child.

And frankly, this is just a continuation of the tactics the government used when they discovered waterboarding Khalid Sheikh Mohammed 183 times wouldn't coerce cooperation, but kidnapping his sons and threatening to kill them would.

Now, we will only see whether the civilian legal system believes coercing someone to testify by threatening their family members amounts to a Miranda waiver if this case goes to trial: with everyone else, Zazi, Abdulmutallab, and Shahzad, the government got plea deals before any evidence about why the accused person "waived" his Miranda rights.

But we do seem to have more and more evidence that this is a favored tactic of our own government.