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Few Clear Wins in U.S. Anti-Terror Cases

Moving Early on Domestic Suspects Often Does Not Bring Convictions

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When seven ragtag men in a Miami religious sect were indicted in 2006 for their role in a bizarre plot to blow up the FBI Miami office and Chicago's Sears Tower, then-Attorney General Alberto R. Gonzales said the case represented "a new brand of terrorism" among homegrown gangs that "may prove to be as dangerous as groups like al-Qaeda."

Justice Department officials used similar rhetoric in a 2003 case against a Tampa-area man and his associates who allegedly supported a reign of terror by a violent Palestinian group. The officials did so again in a 2004 case involving a Dallas charity known as the Holy Land Foundation, which they said provided "blood money" to finance overseas suicide bombings.

But juries in all three cases saw things differently than the government's national security team. In the most recent disappointment for federal prosecutors, a jury last week did not reach a verdict in the Miami case for the second time. In the Holy Land case, one defendant was cleared of the charges and ju-

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rors deadlocked on charges against the others. After 12 days of deliberation, jurors in the Tampa case acquitted two men and could not agree on the charges against the main defendant.

The department's domestic terrorism record to date — no new attacks, but few blockbuster convictions and some high-profile hung juries or acquittals — has provoked criticism of its early strategy for going after homegrown terrorist cells and the people who fund plots well before deadly events occur.

Jurors appear to be particularly troubled by a controversial element in the Miami case, part of several other early prosecutions, in which FBI informants encouraged others to perform acts they otherwise may not have done.

This week, federal prosecutors in Miami will announce whether they will seek to try the defendants for the third time. The government's incentive to do so is powerful: Two years ago, it intended the case to be a model for intervention against potential terrorists before they acquire the weapons and insight needed to act.

Independent commissions have urged the FBI to become more aggressive at detecting threats and neutralizing them before they explode. But what emerged was an approach where investigators sometimes acted very early, charging conspiracies to commit minor crimes or immigration and tax violations as a way to preempt potential threats, while avoiding the disclosure of sensitive intelligence.

Justice Department officials say they are pleased to have won a few high-profile convictions as well as some little-noticed guilty pleas. Increasingly, authorities say, their current goal is broader than a courtroom victory: It is collecting enough intelligence to eradicate a threat by using informants, wiretaps and other tools to get as clear a picture as possible.

"Our mission is not just to disrupt an isolated plot, but to thoroughly dismantle the entire network that supports it," FBI Director Robert S. Mueller III told an audience this month.

The Miami case revolved around a part-time contractor who gathered a loose band of men in a rented room in a downscale neighborhood known as Liberty City. The group, distantly affiliated with the Moorish Science Temple religion, talked about Muhammad, Jesus, Confucius and Buddha, and also practiced martial arts.

Its leader, Narseal Batiste, told his Yemenese grocer in October 2005 that he wanted to conduct jihad to overthrow the U.S. government. The grocer, an FBI informant who himself had a criminal record, told the bureau. The FBI then employed a second informant, this one an Arab from overseas who depicted himself as a representative of Osama bin Laden.

Batiste confided, somewhat fantastically, that he wanted to blow up the Sears Tower in Chicago, which would then fall into a nearby prison, freeing Muslim prisoners who would become the core of his Moorish army. With them, he would establish his own country.

The FBI informant, under bureau guidance, refocused Batiste on what he said was bin Laden's plot — to bomb FBI offices in several U.S. cities. Batiste's group was enlisted by the FBI informant to aid in the attack. The informant then wrote out what he termed an al-Qaeda oath, and got Batiste to lead his men in taking it — an act that the government argued was key evidence of their guilt.

After one of the seven left Miami to get away from the group, an internal dispute developed and it fell apart. They were then arrested, charged with conspiracy to commit a terrorist act and placed in prison, where they remain.

Jurors in the case, which ended in a mistrial last week, have not spoken about it publicly. But panel members who deliberated in the first trial told reporters they were skeptical that the defendants were as dangerous as prosecutors asserted.

Formerly the largest Muslim charity in the United States, the Holy Land Foundation was "funding the works of evil" and encouraging suicide bombings on behalf of Hamas, according to a press conference statement in 2004 by then-Attorney General John D. Ashcroft.

Earlier that morning, authorities had arrested a group of men with ties to the foundation for supporting Hamas, violating laws that bar financial transactions that threaten national security, and money laundering, among 42 counts that could have sent the men to prison for decades.

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But the prosecution ended in a mistrial last October, when Dallas jurors could not reach agreement on charges involving two defendants and mostly cleared another of criminal wrongdoing. Jurors have offered contrasting accounts of the problems they faced, but at least one cast doubt on the quality of the evidence. Prosecutors are scheduled to retry the case later this year.

A less-publicized case involves Javed Iqbal, a Brooklyn businessman who provided overseas cable access to clients and data to others, including U.S. government agencies. In August 2006, Iqbal was arrested for conspiring to supply financial support to a terrorist agency. His alleged crime was selling access to Al-Manar, the news and information cable channel run by Hezbollah out of Lebanon.

According to court filings, the case started when a confidential informant told the FBI in February 2006 that Iqbal was selling access to Al-Manar. At the time, it was not illegal, but the next month the Treasury Department added Al-Manar to the list on the grounds that funds it obtained went to Hezbollah, which the United States considers a terrorist group.

In June, the FBI's confidential informant went back to Iqbal's company and again offered to buy the overseas cable service that included Al-Manar. Iqbal told the informant that Al-Manar was temporarily unavailable, but would return. Iqbal also allegedly said he knew the channel was now on the terrorist list, but he expected that to change.

After being arrested for conspiring to violate the law, Iqbal was released on $250,000 bail. In November 2006, he was indicted again, along with a partner, this time on multiple charges of conspiracy to provide support to Hezbollah.

At the time of the arrests, Michael Garcia, the U.S. attorney for the Southern District of New York, said, "As terrorist organizations become more sophisticated, it is critical that we respond using all the law enforcement tools the law provides." They are awaiting trial.

The Justice Department, U.S. attorneys and the FBI have doggedly pursued individual suspects in these domestic terrorism cases, even when their initial steps are unsuccessful.

In Miami, prosecutors not only sought a retrial after the first hung jury but also went after the one person, Lyglenson Lemorin, whom the jury found not guilty. Instead of turning him loose, they immediately had him detained for possible deportation to his native Haiti on grounds that he had been indicted on a felony charge.

Law enforcement officers say that in deciding when to indict, they weigh whether the targets might flee overseas, whether the cost of surveillance is paying adequate dividends, and whether a group is likely to take actions that could cost human lives.

"There's a risk here that while we're trying to perfect our evidence that something very bad could happen," said Patrick Rowan, acting chief of the Justice Department's National Security Division. "It's certainly the case that there is a value in stopping a plot, even if you aren't 100 percent certain that a conviction is assured."

Robert M. Chesney, a law professor at Wake Forest University who studies the government's terrorism cases, said the picture is complicated. "The bottom line is that they are doing considerably better than is often reported . . . but they certainly aren't doing perfectly and they've had plenty of black eyes along the way," Chesney said.

One senior law enforcement official recently said, "We may have been too aggressive at the beginning." He thinks that early cases, such as the one in Miami, were pushed too hard and that the FBI and U.S. attorneys now understand that getting a full picture of potential threats by groups is as important as making cases.

J. Wells Dixon, a staff attorney for the Center for Constitutional Rights, said the Miami case is among the "few and far between" disappointments in the government's aggressive campaign to attack the sources and funding of possible terrorist groups. These outliers, Dixon said, are not a signal that terrorism cases are too complex for juries but rather a sign that the current system is working.

"If you have 12 jurors who decide that an individual or an organization should not be convicted, I think that suggests these people are in fact not guilty of anything," Dixon said.

Andrew C. McCarthy prosecuted Omar Abdel Rahman, the man known as the blind sheik, for his role in the 1993 World Trade Center bomb plot. McCarthy said that had the first Trade Center bombing, which killed six people, not happened, he still wonders whether the government could have secured convictions of the same defendants on more nebulous charges that they had made "fantastical" plans to blow up the United Nations and the Lincoln Tunnel.

"The argument that the people really are pathetic, hapless, incapable, has more resonance if you strike at an early stage," he said. "In a way, you're undone by your own efficiency. I do think it's harder to be a prosecutor today."

Staff researcher Julie Tate contributed to this report.

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BY JESSICA RINALDI — REUTERS

Supporters of defendant Abdulrahman Odeh, center, celebrated with him after a U.S. District Court judge in Dallas declared a mistrial in October on almost all of the counts against the Holy Land Foundation, an Islamic charity.