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February 16, 2009

President Barack Obama  
The White House  
1600 Pennsylvania Ave. N.W.  
Washington, DC. 20500

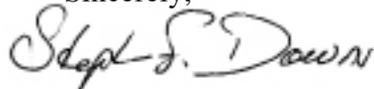
Attorney General Eric Holder  
Department of Justice  
950 Pennsylvania Ave. N.W.  
Washington DC. 20530-4371

Dear President Obama, and Attorney General Holder;

Attached is a letter signed by almost 1,000 people, requesting an investigation into the validity of numerous criminal prosecutions brought after 9/11 against Muslims. We believe that in the lawlessness of the Bush administration, policies were implemented to prosecute terrorism-related charges, not against people who had actually committed crimes, but at best against Muslims who the administration suspected might commit crimes in the future. (At worst, innocent Muslims were targeted to send a warning to the Muslim community, or to justify high law enforcement budgets, or to convince voters to be afraid and vote for the party that would best protect them.) Like the Bush policies of torture, illegal wiretapping and detention at Guantanamo, the “preventive conviction” of innocent Muslims is a blot on the honor of America, a shame to our constitutional and legal traditions, and a continuing injustice to the Muslims who were framed or overcharged, and remain in jail often under dreadful conditions.

We are delighted that your administration has moved so rapidly to deal with Guantanamo and torture, although much still remains to be done. However, we ask you not to leave behind the innocent or overcharged Muslims who became the scapegoats of a vengeful Bush Administration’s illegal policies. They also deserve justice.

Sincerely,

A handwritten signature in black ink that reads "Stephen F. Downs". The signature is written in a cursive, slightly slanted style.

Stephen F. Downs, for Project SALAM

**Project SALAM**  
**Support and Legal Advocacy for Muslims**  
**[www.projectsalam.org](http://www.projectsalam.org)**

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Dear President Obama and Attorney General Holder:

We join with the consensus of people who believe that upon taking office you must move swiftly to close Guantanamo, end warrantless electronic surveillance, and prevent the U.S. from engaging in further torture. These fundamental errors arose because the Justice Department succumbed to post-9/11 hysteria and set aside the Constitution and a long legal tradition of due process and respect for human rights to sanction illegal government policies aimed primarily against Muslims.

The fundamental errors of the Justice Department did not stop just at international issues such as Guantanamo and torture, but continued into domestic prosecutions of Muslims based on suspicion of possible future criminal activity, rather than on actual crimes committed. Obviously, prosecuting innocent people because of suspicion that they might commit crimes in the future is highly illegal, and violates the Constitution and our legal tradition in the same way as the Bush Administration's policy on torture or Guantanamo violates it. That these prosecutions were directed at a particular religious group – Muslims – makes the errors all the more offensive to American notions of justice. We ask you to review these prosecutions.

Project SALAM is an Internet project, whose web address is listed above, dedicated to recording and documenting the Justice Department's illegal abuses against the Muslim community after 9/11. On our website we have listed approximately 400 cases that we believe may have resulted in injustice – and the number keeps growing. Rather than provide you with massive amounts of material showing this abuse, we are including with this letter only a sample of newspaper articles from around the country showing how independent newspaper reporters reacted to some of the phony, over-hyped, under-proved prosecutions of Muslims that have occurred around the country. If this material does not convince you that an investigation is necessary, we will be happy to provide more.

The abuses in the prosecution of innocent Muslims have not received the same publicity or scrutiny that Guantanamo or the torture policy have, but they have resulted in equally serious or even greater abuses. We believe that large numbers of innocent or over-charged Muslims are serving long prison terms based on illegal and unconscionable prosecution tactics, where the prosecutors knew or believed that the defendants were not guilty of any crime or were not guilty to the extent prosecuted. If an independent inspector were to examine the files of these cases, he or she would discover memos indicating that the prosecutions were begun not because the prosecutors believed the defendants had committed crimes, but at best because they believed the defendants were suspicious or might commit

crimes in the future, and at worst because they believed that a successful prosecution might intimidate the Muslim community, or boost approval of the administration at the polls, or justify the large budgets given to law enforcement after 9/11, or lead to the “cooperation” of the target defendant against other suspicious targets. In many instances, no criminal activity would have existed at all but for the fictional conspiracies or terrorist plots created by the prosecutors themselves.

Often the charges and the proof against the defendants have relied on guilt by association and on the demonizing of free speech and lawful activities. Some of the common factors in these prosecutions have been the use of illegal wiretaps, secret evidence withheld from the defense, and entrapment of the defendants using criminals hired as “informants” to suggest activities for which the defendants had no predisposition. Prosecutors have intimidated juries with fear tactics, hyped pre-trial press conferences, exaggerated security precautions at trial, mistranslated documents, introduced phony expert testimony, and admitted irrelevant but prejudicial material as “evidence.” The defendants, once convicted, have often been sent to a special Muslim prison in Terre Haute, Indiana, the Communication Management Unit (CMU), where their ability to communicate with the outside world has been severely restricted, and they are given minimal or no services that are normally afforded prisoners in other jail.

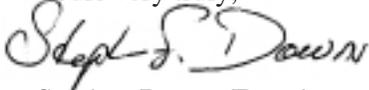
Many of the questionable prosecutions originated in a special terrorism unit in Washington which used warrantless NSA material to illegally generate suspicion and target individuals. Because the NSA material has been deemed secret, it could not be challenged or revealed to the defendants to show it was unreliable or false. (In the same way, the Justice Department classified secret legal memos that led to the establishment of Guantanamo, secret rendition, torture, and other abuses so that none of it could be challenged and shown to be false.)

Where it is known that a certain government agent committed perjury in some cases to obtain convictions, it is an established practice to appoint an independent investigator to examine all of the cases in which the agent testified to determine if the agent committed perjury in the other cases as well. Here it is beyond question that the Bush Administration engaged in highly illegal tactics to punish innocent people, mostly Muslims, in places like Guantanamo, and it is a matter of this country’s honor as well as justice for the victims to examine all of the cases in which such injustices may have occurred, including domestic cases.

All around the country, groups have been formed (by Muslims and non-Muslims) to protest particular cases of injustice, and these groups may send you information about the particular injustices they have observed. But tragically, in many cases the U.S. government’s tactics of scapegoating the Muslim community were successful, and no groups were formed to protest or advocate for wrongly prosecuted Muslims. It is especially for these cases of injustice that we ask that an independent investigation be conducted. Neither appointed defense counsel nor the courts can successfully protect innocent people when the government covers up its illegal acts by secrecy. Only a reformed Justice Department, which conducts an investigation of these cases by an independent counsel, can clean the stain of injustice from its record of abuse against the Muslim community in America.

You may contact us at any of the addresses below.

Yours very truly,



Stephen Downs Esq., lawyer,  
26 Dinmore Road, Selkirk NY. 12158; (518) 767-0102; swdowns68@aol.com

Plus 970 additional signatures on pages 4 to 29 omitted here. To see all of the signatures go to:  
<http://www.projectsalam.org/downloads/Obama-Holder%20Letter%20Final.pdf>

## **List of Attachments**

**History will remember Albany terrorism sting as a witch hunt**

Albany [New York] *Times Union*, Friday, January 12, 2007 By Fred LeBrun. . . . . Page 31

**Sting case negates core of U.S. values, Opinion**

Albany [New York] *Times Union*, Thursday, March 8, 2007 By SHAMSHAD AHMAD Page 33

**Letter from Denis Halliday, Former UN Assistant Secretary-General, to the Syracuse [New York] Post-Standard,** (Published 2/21/08 with the title, “Do we want Dhaafir’s justice to be America’s?” The last paragraph was not included in the Post-Standard.) . . . . . Page 35

**SANDERS: Holy Land Five convictions mark sad day for American justice system**

Fort Worth [TX] *Star-Telegram*, Sunday, Nov 30, 2008, BOB RAY SANDERS, bobray@star-telegram.com. . . . . Page 36

**A Brooklyn College Grad Experiences the Constitution in a Cage  
Torture in Manhattan for 28-year-old Muslim American Sayed Fahad Hashmi**

*The Village Voice* [New York], November 05, 2008 By Nat Hentoff. . . . . Page 39

**Department of Pre-Crime**

*Mother Jones*, February 29, 2008 By Eric Umansky

**News: Why are citizens being locked up for “un-American” thoughts?**

Illustration by Brian Stauffer . . . . . Page 41

Albany [New York] *Times Union*  
Friday, January 12, 2007

## **History will remember Albany terrorism sting as a witch hunt**

By Fred LeBrun

Someday we'll look back on the present national paranoia over terrorism and the excesses done in its name with the same national embarrassment that Americans feel for Sen. Joe McCarthy's communist witch hunts of the 1950s and our appalling treatment of Japanese-Americans during World War II.

Someday.

But not anytime soon, and certainly not before Yassin M. Aref, the former imam at an Albany mosque, and Mohammed M. Hossain, a pizza shop owner, are sentenced on Feb. 12.

A federal jury convicted the pair of a varying number of counts in an FBI money laundering sting operation with terrorist overtones involving a phony missile launcher. They each face 25 years in jail.

There are motions before the court to throw out the conviction, but since the judge tipped his pro-prosecution hand during the trial, they will come to naught. And the inevitable appeal will stutter along. But given the dismal times for due process in our vaunted system of justice, the chances of reason, of common sense, prevailing over hysteria and hellbent ideology are slim.

History will see these two as victims. Not innocents, but victims. Of this I am utterly convinced. Small comfort for them, or their families. They have 10 children between, all under the age of 13.

This case should never have seen a courtroom. Because once the mesmerizing ingredients were brought into a trial -- the convoluted and selective translations, a glib informant avoiding 15 years in jail and the exploitation of our fears and anxieties over global terrorism by prosecutors, -- the results were predictable. The trial had remarkably little to do with Aref and Hossain. This was not our federal court system's finest hour, or the FBI's, either.

From the beginning, the feds knew better. Up front, the Justice Department in Washington admitted that this case was not all that strong or the defendants all that dangerous. But the FBI put a lot of resources and a lot of money, time and ego into a complicated sting that took months and months and leaps of faith to swallow. So the feds wanted a couple of scalps for all their efforts. They got them.

But that still begs the question of why the feds pursued this prosecution with such zealously, even after recognizing as they must have that Aref and Hossain never posed any threat to our national security.

It seems there was an ulterior motive, also reflective of our times. Sending a chilling message through the American immigrant Muslim community.

Assistant U.S. Attorney William Pericak, the lead prosecutor, told our reporter Brendan Lyons after the trial, that he was convinced that if a real terrorist showed up in Albany, "I am convinced they both would have helped him." Strange, since there is not a shred of evidence to support that.

"It's not just these guys, it's what happens tomorrow when a guy is somewhere and overhears someone talking about an attack," Pericak said. "We want that person to call the FBI. If they call the FBI because they're a good citizen that's great, but if they call the FBI because they think this is a sting and they might get caught up in it, that's OK, too."

Well, according to the Muslim Solidarity Committee, a local support group for Aref and Hossain, the government has been dazzlingly successful in spreading fear and distrust in the local immigrant Muslim community. However, that would be a fear of the FBI and our government.

Looking up from a warm seat somewhere, Senator Joe must be viewing all this with a knowing smile.

LeBrun can be reached at (518) 454-5453 or by e-mail at [flebrun@timesunion.com](mailto:flebrun@timesunion.com).

Opinion

Albany [New York] *Times Union*

## **Sting case negates core of U.S. values**

By SHAMSHAD AHMAD

First published: Thursday, March 8, 2007

We have seen many changes in our country since the tragic events of 9/11. This is especially true for American Muslims. Even though the 9/11 attacks were committed by people who entered this country expressly for that evil purpose, it was to the Muslims that the eye of suspicion turned. American Muslims, their institutions and mosques, became the focus of investigation and the objects of extreme scrutiny. The terrorists succeeded primarily because of an intelligence failure. In response, our government allocated a tremendous amount of resources, money and manpower to the intelligence agencies, including the FBI at Albany and its Terrorism Task Force. This, coupled with the formation of new legislation previously unthinkable: government surveillance made permissible and a so-called secret evidence law that allowed for people to be tried, without even knowing what was being used as proof of their guilt.

Our intelligence agencies felt an extra pressure, too -- a pressure to produce visible results. This pressure led to results across the nation, but often incorrect ones. Thousands of Muslims were detained and questioned, their property seized, and some were even charged with terrorism. But no real terrorists were found. Most cases were based on suspicions and hardly of actual evidence. Many innocent people fell victim to this aggressive manner of policing, and many families, communities, mosques and Islamic institutions suffered.

Somehow, in this new age of suspicion, our mosque at Central Avenue in Albany and its members became a target of investigation by the FBI. The mosque was opened in 2000. It has about 300 attendees, mostly residents of the downtown Albany area, or those who are employed in that vicinity. The mosque serves as a place of worship and a community center. It provides a weekend school for children, and classes and counseling for adults. It also caters community needs such as weddings, community dinners, funerals, etc. A small community has grown in the area surrounding the mosque, with several stores and many residences.

Members of our mosque believe the FBI put the mosque and its members under surveillance immediately after 9/11. One member of the mosque, Ali Yaghi, was arrested, interrogated, detained for two years without any charge, moved to various prisons and then deported to Jordanian authorities. He was finally freed there, but he lost his family, his children and his life in the United States.

Dozens and dozens members of our community were investigated. They were either visited or invited by the FBI for interviews. These investigations discovered nothing, simply because the mosque and its members have nothing to do with terrorism or anything illegal. We are a law-abiding people. Respecting and obeying the law of the land is an integral part of our religion. We have no interest in harming the society and the country in which we and our children live.

We wish the FBI would have left us alone and moved on to discovering real terrorists elsewhere. However, it seems that in order to claim a success in countering terrorism, the FBI decided to target two individuals, Yassin Aref and Mohammed Mosharref Hossain. A very elaborate and comprehensive sting plot was created to convict them.

Aref and Hossain are simple, religious, family men with no criminal records and no inclination to

terrorism. They were tricked in this elaborate deceptive plot. For this purpose, the FBI hired Shahed "Malik" Hussain, a convicted criminal in the United States and an alleged fugitive of a serious crime in his home country of Pakistan. For the next 10 months, Hussain was trained and coached in how to deceive and elicit statements that could be found incriminating from Aref and Hossain. These recorded conversations -- a lot of which are gossip and loose talk, some taken out of context, and some wrongly translated -- were aggressively used by the prosecution in the trial of Aref and Hossain. It was simply too much for the jury to sort out the fact from the fiction, with the FBI drawing a picture of the two defendants as predisposed terrorists. They were found guilty and are to be sentenced today in federal court in Albany.

This case has left the Muslim community with a deep sense of pain, disappointment and demoralization. The lives of these two men, their wives and 10 young children combined are shattered.

Aref sought refuge in this country from Saddam Hussein's Iraq. Hossain came here from Bangladesh, with the hope that hard work and determination would open the doors of success for he and his family. Most of our immigrant members share the same story and the same dream: that we would be able to live and provide a better life for our children than what we found in our homelands; to live in a land free of discrimination, prejudice and injustice.

The laws and methods of investigation that have become acceptable after 9/11 are completely at odds with the general principles of fairness, justice and integrity that this nation stands upon, and they are doing very little to make our country safer. Intellectuals and responsible citizens must stand strongly against racial and religious profiling, detention, entrapment and prosecution of innocent individuals.

*Shamshad Ahmad is founder and president of Masjid As-Salam Mosque in Albany. He was born and raised in India, received a Ph.D. from the Australian National University and teaches physics at University at Albany. His e-mail address is ahmad@albany.edu.*

<http://www.dhafirtrial.net/2008/02/18/letter-to-the-syracuse-post-standard-from-denis-halliday/>

**Letter from Denis Halliday, Former UN Assistant Secretary-General, to the Syracuse [New York] *Post-Standard***

(Published 2/21/08 with the title, “Do we want Dhafir’s justice to be America’s?” The last paragraph was not included in the *Post-Standard*.)

**To the editor:**

On February 26, 2003, Dr. Rafil Dhafir, a prominent Syracuse oncologist, was arrested and 150 Muslim families interrogated in connection with a charity established to provide humanitarian aid to children suffering in Iraq. As we approach the fifth anniversary of that arrest, it seems pertinent to question the continued persecution of Dr. Dhafir, an Iraqi-born U.S. citizen of some 30 years.

Many Americans generously assisted, directly and indirectly, the Iraqi people who were being killed and starved due to the impact of United Nations sanctions imposed - at the insistence of the U.S. and Britain - after the withdrawal of Iraq from Kuwait in early 1991. Dr. Dhafir was one of those Americans who generously gave his time and financial resources. He founded “Help the Needy” for that purpose and raised millions of dollars in food aid and medical assistance for the Iraqi people.

Other U.S. citizens who sent humanitarian aid to Iraqi children and adults in defiance of UN sanctions had civil fines imposed by Washington, but none were imprisoned. In contrast, Dr. Dhafir is serving 22 years for his humanitarian outreach in defiance of the sanctions that many, myself included, consider to have been genocidal. Does this mean that a different standard is being applied to U.S. citizens who are Muslim? Dr. Dhafir’s extraordinary sentence, in combination with the establishment of a special federal prison to isolate Arab and Muslim inmates, indicate that the answer is yes.

Dr. Dhafir has become a victim of American injustice that applies double standards. He has been swept up in anti-Islamic, anti-Arab madness that has corrupted the American justice system. It is past time that all humanitarian-minded, decent Americans ask ourselves: Is this the justice system that we want? When American values and American democratic principles are endangered, we must take on the responsibilities of citizenship. We must reverse these prejudicial practices before it is too late.

Sincerely,

Denis J. Halliday  
Former UN Assistant Secretary-General,  
Head of the UN Humanitarian Program in Iraq 1997-98,  
Member, Dr. Dhafir Support Committee Advisory Board.

[http://www.star-telegram.com/news/columnists/bob\\_ray\\_sanders//v-print/story/1064204.html](http://www.star-telegram.com/news/columnists/bob_ray_sanders//v-print/story/1064204.html)

**Sunday, Nov 30, 2008**

Fort Worth [TX] *Star-Telegram*

Posted on Sun, Nov. 30, 2008

## **SANDERS: Holy Land Five convictions mark sad day for American justice system**

BOB RAY SANDERS

[bobray@star-telegram.com](mailto:bobray@star-telegram.com)

On its face, the U.S. government won last week when a federal jury in Dallas convicted the Richardson-based charity Holy Land Foundation and five former leaders of providing financial aid to a foreign terrorist organization — Hamas.

But a Fort Worth defense attorney who has been involved in the case since 2005 called the prosecution shameful and compared the 42-day trial to some of the darkest days in American history.

Attorney Greg Westfall, one of eight lawyers on the case, sat in his downtown office Wednesday — two days after the guilty verdicts had been handed down on all 108 counts — and looked dejected.

After years of silence because of a gag order in the case, Westfall was ready to talk.

He began by pointing to a published story in which Richard Roper, U.S. attorney for the Northern District of Texas, was quoted as saying, "This is a great day in the United States. We will not tolerate those who fund terrorism."

"A great day for the United States?" Westfall asked rhetorically and emphatically. "Yeah, like Dred Scott was a great day for the United States. Like the 'Red Scare' was a great day in America."

(Dred Scott was the 1857 Supreme Court case that declared no slave or descendant of a slave was a citizen of the United States and, therefore, had no right to sue in federal court.)

The case involving what I call "The Holy Land Five" was one in which the U.S. government spent years and millions of dollars to convict the charity leaders on conspiracy charges. The first trial ended in a mistrial last year, but prosecutors vowed to pursue it.

"This was a trial based on fear and prejudice," Westfall said, adding that President George W. Bush had "set the tone for this day by using words like " 'Islamic fascists.'"

For example, he said, "In the 1940s we rounded up several thousand Japanese, just because they were Japanese. Ten years later, we had the 'Red Scare' that ruined lives — that killed the Rosenbergs. And here we go again."

In pandering to racial and religious prejudices, Westfall said, the prosecution depended on people accepting the stereotype that "Muslim equals Islamist equals terrorist."

"Do we as Christians want to be judged by Eric Rudolph blowing up abortion clinics?" he said. "If we as Christians don't want to be judged by that, then we probably should not judge all Muslims because of Osama bin Laden."

While avoiding criticizing the jury, Westfall did not hesitate to condemn "the way the case was presented and allowed to be presented — by the judge and the government — to the jury."

It was based mainly on guilt by association, he said, including associations with groups that have never been proven to be "terrorists" or supporters of terrorism.

The Holy Land Foundation generally gave to *zakat* committees that supported charities, including orphanages, in the Middle East. The government shut down the organization in 2001 after the Sept. 11 attacks and then began the long crusade to convict its leaders by trying to tie them to Hamas, which the U.S. declared a terrorist group in 1995.

Westfall thought it out of line that the government published a list of about 300 unindicted co-conspirators, groups he said were considered by many to be mainstream organizations, like the Council on American-Islamic Relations (CAIR).

"Any statements made by anybody on that list could be held against our clients," he said.

The attorney said the government also produced items from a search warrant of someone's home in Virginia, and went so far as to present documents, seized in a military operation, that the defense was not allowed to see.

"We were barred from seeing them or an index of what was there, and [the prosecution] introduced them through an unnamed Israeli soldier who was not present when the documents were seized," he said.

In addition, there were other "unsigned and unauthored" documents retrieved in a raid of the Palestinian Liberation Organization and introduced as evidence, he said.

"It was all tied together by an Israeli secret agent who didn't have to give his name," Westfall said. "He testified as an expert — was allowed to testify at length without us knowing who he was. Do you realize what power that is? If you don't have to give your real name, you can't face perjury — you get a free pass."

He added, "If the president of the United States had testified in this trial, he would have

had to give his name. In this trial, we gave an Israeli secret agent more power than we would give the president of the United States."

The attorney said prosecutors tried to link the nonprofit organization to terrorists when in reality it was simply a faith-based group supporting charities whose leaders often talked about the occupation of the Palestinian territories.

"The Holy Land Foundation was a faith-based organization that just happened to be the wrong faith," he said.

The case will be appealed. When asked what chances he thought he had, Westfall said:

"I think it gets reversed — hope springs eternal. I think in the end —and it may take way too long — America gets it right. We just have to go through this over and over again."

Because prosecutors argued that the defendants have still been raising money and, therefore, pose a threat to the country, the judge ordered them jailed while the case is on appeal.

I'm on record saying that this case was more about religious bigotry and political pressure than facts. And I believe, like many others, that the Holy Land Five are political prisoners, not terrorists.

As I left Westfall's office, he repeated sarcastically, "This is a great day for America."

Yes, indeed, a *great*, sad day for our country.

<http://www.villagevoice.com/2008-11-05/columns/a-brooklyn-college-grad-experiences-the-constitution-in-a-cage/>

## **A Brooklyn College Grad Experiences the Constitution in a Cage Torture in Manhattan for 28-year-old Muslim American Sayed Fahad Hashmi**

By Nat Hentoff

published: November 05, 2008

The *Village Voice* [New York]

For the past year, a 28-year-old Muslim American student, Sayed Fahad Hashmi—the first person extradited to the United States from Britain to face charges of terrorism—has been held at the Manhattan Correctional Center under conditions of confinement that are the very definition of the Eighth Amendment's prohibition of "cruel and unusual punishment."

He has not been charged with being a member of Al Qaeda or for providing any money or resources to any terrorist. He is here—for a trial months away in 2009—for letting a former acquaintance, Junaid Babar, stay for a couple of weeks in his London apartment, where Babar stored several ponchos, raincoats, and waterproof socks in a suitcase. (Hashmi was still in London after receiving a master's degree from London Metropolitan University.)

Babar—not Hashmi—gave these socks and ponchos, it is alleged, to a high-ranking member of Al Qaeda.

That gives you some indication of Hashmi's supposed connection to terrorism.

Says Hashmi's New York-based attorney, Sean Maher: "We are talking about socks here."

We are also talking about what has happened to this country after Dick Cheney—on September 16, 2001—said, "We also have to work, though, sort of on the dark side, if you will. . . . It's going to be vital for us to use any means at our disposal, basically, to achieve our objective."

Before I go further into the particulars of the case against Hashmi, I must first explain why three letters from civil liberties groups have been sent in the interest of what remains of our Constitution to Attorney General Michael Mukasey, under whose authority Hashmi is imprisoned here under Special Administrative Measures that violate Common Article 3 of the Geneva Conventions and our own torture laws. The Brennan Center for Justice, the Center for Constitutional Rights, and the Association for Muslim American Lawyers wrote to Mukasey asking him not to renew on October 29 these Special Administrative Measures for this prisoner who has not been convicted of anything and, under what used to be American law, is presumed innocent until proven guilty.

On a 23-hour solitary-confinement lockdown, Hashmi, was not allowed family visits for months. Now, he can see one person for an hour and a half, but only every other week. He is permitted to write only one letter a week to a single member of his family, but he cannot use more than three pieces of paper per letter. (I would be grateful, Mr. Mukasey, for an explanation of how these restrictions serve our security needs.) Mr. Hashmi is forbidden any contact—directly or through his attorneys—with the news media. He can read newspapers, but only those portions approved by his jailers—and not until 30 days after publication. And he is absolutely forbidden to listen to news radio stations or to watch television news channels.

You will not be surprised to learn that he is under 24-hour electronic monitoring and is forbidden to communicate with any of the other inmates. However, a merciful Justice Department allows him one hour of recreation every day—inside a cage. His attorneys are concerned, to say the least, that this extreme isolation "will cause lasting psychological, emotional, and physical damage" to their client. Among the scientific evidence they cite are the findings of Craig Haney, professor of psychology at the University of California, Santa Cruz. Having reported for *Legal Times* on "supermax" prisons in the United States—about which Professor Haney has been an expert witness in court cases—I was familiar with the Haney's conclusion, cited by Hashmi's lawyers: "There is not a single published study of solitary or supermax-like confinement . . . that failed to result in negative psychological effects."

Years ago, I read Charles Dickens's account of the first American version of a supermax prison in his *American Notes*. Notwithstanding all he had seen in the bowels of British prisons, Dickens was horrified. With American know-how, today's supermaxes are far worse.

Professor Haney's research was brought into this case by Hashmi's lawyers because, they state: "The continuation of such draconian pre-trial conditions of detention will not only harm Mr. Hashmi's health, but also"—and this is crucial to what used to be known as due process of law in our Constitution—"the potential mental and physical deterioration that will follow such conditions [of confinement] will impact Mr. Hashmi's ability to assist counsel in preparing for trial."

Hashmi's defense lawyers continued with the hope of attracting the attention of General Mukasey, formerly a much-praised federal appellate judge in New York: "Because there are less restrictive means to protect the government's security interests without causing direct harm to Mr. Hashmi, any deterioration in Mr. Hashmi's health or ability to assist in his defense *will be directly attributable to the government*" (emphasis added—as if they care).

Not only will Hashmi have been stripped of his Eighth Amendment right to be free from cruel and unusual punishment, but he will also be deprived of his Sixth Amendment right to be in sufficient condition to help his counsel prepare for his defense—and thereby receive a fair trial.

Last August, Jeanne Theoharis, an associate professor of political science at the City University of New York's Brooklyn College, was instrumental in organizing a "Free Fahad" campaign that enlisted more than 550 prominent academics to sign a petition to the Justice Department protesting the fearsome conditions of Hashmi's confinement and the corollary undermining of his right to a fair trial. Among them were Henry Louis Gates Jr. and Duncan Kennedy of Harvard; Seyla Benhabib at Yale; Eric Foner and Saskia Sassen of Columbia University; and Professor Theoharis's father, Athan Theoharis, of Marquette University (emeritus), from whose work I've learned a lot about the FBI, constitutional law, and the determination to safeguard the latter from the government.

Hashmi was a student of Jeanne Theoharis at Brooklyn College, and as the *Chronicle of Higher Education* reported in a front-page August 8, 2008, story: "Ms. Theoharis recalls that her student took a keen interest in civil liberties. Mr. Hashmi wrote his final paper for her class on the contradiction between basic American freedoms and the U.S. government's treatment of citizens since the terrorist attacks of September 11, 2001. . . . He also loved a vigorous discussion with his fellow students, sometimes lingering after class to finish a debate.

Mr. Hashmi, in his cell here in New York, is witnessing the disappearance of the basic American freedoms he so enjoyed exercising. To be continued.

## Department of Pre-Crime

February 29, 2008

By Eric Umansky

**News:** Why are citizens being locked up for "un-American" thoughts?

**Illustration by Brian Stauffer**

When Attorney General Alberto Gonzales held a press conference in the summer of 2006 announcing the arrests of seven young men for plotting to bomb Chicago's Sears Tower, he sounded defensive, his voice lingering a beat on each thing the men allegedly did. "Individuals here in America made plans to hurt Americans," he claimed. "They *did* request materials; they *did* request equipment; they *did* request funding." Gonzales admitted that the American and Haitian-born men posed "no immediate threat." But, he warned, "homegrown terrorists may prove to be as dangerous as groups like Al Qaeda. Our philosophy here is that we try to identify plots in the earliest stages possible, because we don't know what we don't know about a terrorism plot." It's dangerous, Gonzales added, to make a "case by case" evaluation that "well, 'this is a really dangerous group'; 'this is not a really dangerous group.'"

From the beginning, the allegations seemed bizarre. Allegedly led by Narseal Batiste, an underemployed construction worker, the plotters were an oddball group who dubbed themselves Seas of David. Preaching an eclectic mix of Christianity, Judaism, and Islam, the seven men were known around their neighborhood of Liberty City, Miami, for practicing martial arts and wearing Stars of David. Mostly unemployed and with few resources, they seemed an unlikely bunch to blow up a landmark 1,200 miles away.

The more details that emerged about the case, the fishier it looked. The charges had come about because of a 23-year-old Yemeni clerk named Abbas al-Saidi, who'd been a police informant since he was 16. The fbi helped bail him out when he was in jail facing charges of assaulting his girlfriend. A year later, Saidi returned the favor, telling the feds he'd met a young man—Narseal Batiste—who boasted of wanting to create an Islamic state in America.

The FBI hired Saidi to cozy up to Batiste and his followers, and sent in another informant (also charged with domestic abuse), Elie Assad, to pose as an Al Qaeda financier named "Mohammed." Nearly everything Gonzales said the plotters "did" happened at the urging of the two informants, who reportedly earned about \$120,000 from the feds for their help. (Assad, originally from Lebanon, was also granted political asylum.)

After Assad boasted of his Al Qaeda connections, Batiste talked of wanting to play a part, but only if Assad helped him first. Batiste gave the fake financier a long list of desired equipment, including "boots—knee high. Automatic hand pistols. Black security uniforms. Squad cars. SUV truck—black color." (Not on the wish list: explosives.) Batiste

also said he wanted \$50,000, explaining in one taped conversation, "I'm exhausted financially. We have nothing." Batiste's lawyers would later argue that his promises of jihad were merely an attempt to scam "Mohammed" out of the money.

A few of the Seas of David men did recon the fbi field office in Miami. But the mission had been conceived by Assad, the van and a digital camera both provided by Assad—that is, the fbi.

When Assad failed to deliver the cash and with the Seas of David growing increasingly skeptical about his claims, he tried to assuage them by swearing them into Al Qaeda, which he did—in a warehouse rented and wired for video by the fbi.

The oath became the government's *pièce de résistance*. Charging the men with multiple counts of attempting to provide material support and secondary charges of conspiracy—which could bring them each 70 years in prison—prosecutors began their closing statements by playing the tape of the Seas of David swearing allegiance to Al Qaeda. When the video ended, Jacqueline Arango, an assistant United States attorney, told the jury, "Ladies and gentlemen, that is material support."

After deliberating for nine days last December, the jury acquitted one man who'd separated himself from the group and moved to Atlanta. But it deadlocked on the others, and a mistrial was declared. A new trial is scheduled for this spring. Until then the six men are in prison, and they and their lawyers are under a gag order. (The same applies to the acquitted man, Lyglenson Lemorin, who's in detention awaiting possible deportation to Haiti even though he's lived here legally for nearly 20 years. Citing privacy laws, the government will not explain why he is being kicked out.)

"I think it may hang again," juror Delorise Thompkins told the *Miami Herald*. "You're going to find someone always afraid of terrorist groups, but then when you see the evidence, there's not a lot there—no plans, no papers, no pictures, no nothing connecting them to Osama bin Laden." The jury's ambivalence is understandable. The plots were little more than talk encouraged by informants; the central evidence in the case—the taped oath—was a staged fbi production. But then, whether the men were a threat or the plot real doesn't matter when it comes to the charge of material support.

Material-support laws are not like other laws. Central to what the Department of Justice has described as an approach of "strategic overinclusiveness," they have underpinned many of the government's most controversial criminal terrorism cases, from the so-called Lackawanna Six—young men from upstate New York who trained at, and later fled from, a militant camp in Afghanistan—to José Padilla, the man once accused of being a "dirty bomber."

Indeed, look at the heavily criticized "foiled plot" cases over the past few years—the ones with an informant at the center offering encouragement and often much more—and you'll find material support charges underlying nearly all of them. Material-support statutes have been cited to deny thousands of immigrants—some on the run from actual terrorists

(see file of "Kumar the Fisherman," above)—entrance into the country and are offered by the Pentagon as justification for detaining hundreds of people at Guantanamo, many of whom have provided little more "support" than being, for example, conscripted to cook for the Taliban.

There's a reason material support has become such a popular charge, a reason it's central to many of the government's most questionable cases: The laws are a prosecutor's dream. They don't require evidence of a plot or even of a desire to help terrorists. They give the government a shot at convictions traditional criminal laws could never provide. "The administration adopted the preventive paradigm, i.e. 'We've got to stop people before they've done something wrong,'" says David Cole, a Georgetown University law professor who's the author of several books about the effect of anti-terror laws on the justice system. "There's tremendous pressure to expand grounds of criminal activity, to prosecute people who might represent a threat. The material-support provisions have been the principal vehicle for pushing that envelope."

The question is whether that approach has made us any safer. "The government does not understand how terrorist groups operate," says Michael German, a former counterterrorism agent at the fbi and now counsel for the aclu. "When I was undercover, there were plenty of people who may have been sympathetic to a group but were very clear they didn't want to break the law or get involved in violence. And we didn't go after them." Blurring that distinction by opening the door for prosecutions of people who do little more than express sympathies for a group, argues German, "that's where the material-support provisions go off the rails. The terrorist's goal is to convince everybody he identifies as his community that they are being oppressed. And when the government's response tends to create injustice, the government's fulfilling that prophecy."

The core concept behind the criminal material-support laws—there are two—seems, at first glance, to be straightforward. The first law, passed in 1994 after the first World Trade Center bombing, bans almost any support of terrorist activity. The second law, passed in 1996 in the wake of the Oklahoma City bombing, criminalizes knowingly giving support, financial or otherwise, to groups designated as foreign terrorist organizations, even if the money is supposedly earmarked to support peaceful activities—say, a hospital for Hamas.

Think of the laws as "aiding and abetting"—only on steroids. It has always been illegal to support criminal activity. If a man drives a getaway car for bank robbers, then he can be charged for the robbery, too. Prosecutors have simply had to show that there was an intent to further the crime and some meaningful connection between the help and the crime itself.

What the material-support laws did was roll back those requirements. A taxi driver hired for a short drive by a Hezbollah politician—a driver who had no intention of engaging in terrorist activity—would, so long as he knew the politician was with Hezbollah, be guilty of providing material support. That's because the laws that define "material support" contain a long list of often nebulous activities, such as providing "property, tangible or

intangible" or "service," and are applied whether or not those activities truly helped advance the cause of a terrorist group, and regardless of the suspect's intentions. The laws make little distinction between the taxi driver and, say, an arms merchant who sells detonators to Hezbollah. The Patriot Act extended the concept further, making it illegal to attempt or conspire to provide material support. Before, prosecutors had to prove you *gave* support. Now they just have to show you *wanted* to.

That change, along with other newly exploited vagueness in the existing material-support laws, opened up a whole new path for prosecutors. In the Padilla case and others, the government has argued successfully that a suspect is guilty of attempting to provide material support even if the plot he allegedly supported was purely a government concoction or, just as curious, even if the government hadn't said what group or plot the accused might have been supporting.

Prosecutors have only had to show that the accused expressed interest in helping—as the government puts it—the "global jihad movement." "Under our system you have to show a defendant has done something specific," says Peter Margulies, a national security scholar at Roger Williams law school in Rhode Island. "These charges are really a departure from the usual way of our doing justice."

That departure increases the chance of a screwup. "Fear—a not unreasonable one—of catastrophic harm" provides a great deal of incentive to bring charges against those you suspect might harbor ill will to the United States, says Margulies. "But political violence is a low-incident crime. There just aren't a lot of people making a living as terrorists. When you have a real imbalance like that and you put that together with vague charges, it's a recipe for mistakes. You have to really worry about false positives, about getting things wrong."

The idea for the material-support laws first came in the early 1980s, when, after the bombing of the Marine barracks in Beirut and a string of high-profile kidnappings of Americans abroad, the Reagan administration decided that U.S. law wasn't up to the task of prosecuting people who supported terrorists. Presidents have long had the power to impose embargoes against countries. Shouldn't they be able to do the same against terrorist groups?

Following this logic, the White House proposed to criminalize any training, support, or services to any foreign group designated a national security threat by the secretary of state. The sweeping proposal, which envisioned essentially no oversight, was denounced by both the left and right. A *Washington Post* editorial opined that the legislation might be used against the anti-communist Contras in Nicaragua. "Use your imagination," it warned. If "a President Mondale were to appoint a Jesse Jackson secretary of state, is it not possible that the Nicaraguan rebels might be designated terrorists?"

Congress enacted the first material-support law—limited to immigration issues—in 1990. It allowed the government to bar any aliens who supported a "terrorist organization" or "activity." Both terms were ill defined, and the first time they were tested, on the L.A.

Eight, led to one of the most tortured cases to ever wind its way through the legal system (see their file, above).

It took the 1993 World Trade Center bombing for Congress to put the material-support concept into the federal criminal code. Michael Kraft, a recently retired State Department counterterrorism official, helped draft the law. "The reason for the laws overall was that there wasn't a good way to intercede on fundraising for nonstate actors," he says. "Part of the effort was also to create a deterrence effect. There was a feeling that there was a romanticization of terrorism. European intellectuals occasionally celebrated Red Brigades and Palestinian terrorism. So there was an effort to stigmatize the crime."

The law targeted any support of terrorist activity. But sending money to the IRA for an orphanage, for example, wouldn't be illegal. And to law enforcement, that meant the law didn't go far enough. "Every once in a while we'd see a note on a check saying 'Mujahideen,'" jokes Jeff Breinholt, who heads the Department of Justice's terrorist financing unit. "But usually they didn't do that." So in early 1995 the Clinton administration introduced a bill banning the donation of *any* money, no matter its purpose, to groups designated as foreign terrorist organizations. The idea makes some sense: Should you be allowed to give to the Tamil Tigers' social-services arm? Even if you could be sure the money was going only to build a school, it frees up money for the Sri Lankan guerrilla group to spend elsewhere.

Two months later, when Timothy McVeigh blew up the Murrah Federal Building in Oklahoma City, Congress not only embraced Clinton's proposal, it greatly expanded it. Apart from an exemption for "medicine and religious materials," the new law, part of the 1996 Antiterrorism and Effective Death Penalty Act, criminalized all knowing support to terrorist-designated organizations—whatever the purpose of that support might be.

From the beginning, civil libertarians criticized the statute's potential for overreach. And federal courts have since ruled that some types of banned support are too vaguely defined—rulings that have largely stemmed from a suit in which a human rights organization sued to teach humanitarian law to a Kurdish group designated as a terrorist organization. (The Supreme Court has yet to weigh in.) In an even more farcical case, brought in 2006, a small-time satellite TV operator in Brooklyn allegedly offered to sell a government informant a satellite dish with access to al-Manar, better known as Hezbollah TV. In turn, the government charged the man, Javed Iqbal, with multiple counts of material support and announced he could face up to 110 years in prison. (The trial is set for June.)

And while most Americans would agree that Hezbollah is a terrorist organization, the process for designating groups as such has also drawn scrutiny. The State Department currently lists 42 groups as foreign terrorist organizations. Defendants can't challenge these designations (though the groups themselves can), and while federal judges can overrule the designations, the standards for doing so are high. Federal appeals court Judge Alex Kozinski, a prominent conservative jurist, recently railed against the "patent unconstitutionality" of a process that envisions jail time "for giving money to an

organization that no one other than some obscure mandarin in the bowels of the State Department had determined to be a terrorist organization."

While criticism aimed at material-support laws has mostly focused on the scope of the 1996 law regarding providing financial support to groups, the Bush administration has quietly developed an alternate tactic: supercharging the 1994 terrorist activity provision. This new interpretation, writes Robert Chesney, a professor at Wake Forest law school and a leading scholar on material support, "has quietly emerged as perhaps the single most important charge in post-9/11 terrorism prosecutions."

What the administration realized is that the 1994 law could be interpreted to criminalize support of a terrorist conspiracy even when the conspiracy consists not of a concrete plot but rather of, as prosecutors have put it, the "worldwide jihadist movement." "You don't even need to establish 'conspiracy' as we commonly understand it, because you don't have to prove an agreement with anyone," notes William Banks, director of Syracuse University's Institute for National Security and Counterterrorism. The Patriot Act further juiced the law, making it illegal just to *try* to give support. At its most attenuated, you can be guilty of attempting or conspiring to provide personnel (i.e., yourself) for the preparation of a conspiracy that may or may not exist. "It is possible to indict someone even where the government is entirely unclear as to just what the person may be planning to do," says Chesney. "If it sounds quite broad, it should."

"I'm not sure if a memo went around to U.S. attorneys or what, but they've all been seizing on 2339A," adds Chesney, referring to the section number of the 1994 material-support statute.

Actually, one did. In the summer of 2003, an internal Department of Justice bulletin recommended just such an approach, telling U.S. attorneys that the DOJ "can work with you on this theory and offer sample indictment language." The newsletter was written by Jeff Breinholt from the DOJ's terrorist financing unit. Asked about criticism that the approach is too sweeping, Breinholt says, "Because the object of what you're trying to do is far worse"—that is, terrorism—"it's appropriate to have a standard that's lower than 'aiding and abetting.'"

But how low is too low? Consider the case of a young Pakistani American man named Hamid Hayat from Lodi, California. Hayat was convicted in 2006 of material support even though the government never alleged he was involved in a plot and it never specified which terrorist group he allegedly sought to help. Instead prosecutors focused on what they called Hayat's "jihadi mind" and his confession—which came after an all-night interrogation and was soon recanted—that he had attended a "jihadist" training camp.

Despite qualms from some jurors—one later disavowed her vote, claiming other jurors had pressured her—Hayat was found guilty and sentenced to 24 years in prison (see file above). "If at the end of the day what the government could prove is that Hamid harbored generally ill feelings and got training from some unidentified group," says Chesney, "then

the idea that that constitutes a criminal conspiracy is troubling."

Chesney, a highly regarded and cautious scholar, expresses a wary ambivalence about the law. "It's not entirely clear to me that it's the wrong approach," he says. If the laws get gutted, there could be "pressure to move toward the military approach or cia renditions. Even for liberals, there's an incentive to go with the lesser of two evils." And if the greater evil is rejected by the next administration (willingly or at the courts' insistence), that could, paradoxically, mean an embrace of this problematic legal framework that the Bush administration has set up to fight terrorism.

In that case, experts propose reform that could go a long way to making the laws more just, including more carefully calibrated definitions of what constitutes support or a conspiracy, and, one of Chesney's ideas, graduated penalties based on intent. Whether or not such changes would be remedy enough, it is clear that, as currently interpreted, the material-support laws undermine our standards of justice. That's not only a problem for those caught in the government's wide net. It's a problem for all of us.

"The Constitution is, among other things, a counterterrorism strategy," says Michael German, the former fbi agent. "What the framers recognized is that you don't create the perception of repression if you allow people legitimate means for fostering change. The material-support laws criminalize conduct that in and of itself isn't typically criminal, isn't illegal." When you have cases based on such sweeping laws, argues German, "you're ostensibly hurting terrorist organizations, when in fact you're helping them. You're giving people more of a reason to become militant."

**Zeinab Taleb-Jedi**  
**Hemant Lakhani**  
**Kumar the Fisherman**  
**The L.A. Eight**  
**Yassin Aref & Mohammed Hossain**  
**Hamid Hayat**

**Zeinab Taleb-Jedi**

**U.S. CITIZEN?:** Yes

**INFORMANT:** Two, unnamed

**CHARGE:** Offering "support" for Iranian cultlike guerrilla group MEK: herself

**TWIST:** Neocons love the MEK because it hates Iran; the group's base in Iraq is under the protection of the U.S. military.

**OUTCOME:** Out on bail, living in a homeless shelter in NYC

The Mujahedin-e Khalq, or MEK, is one of the world's odder guerrilla groups. Espousing a mix of Marxist and Islamic rhetoric, members take vows of chastity and engage in "weekly ideological cleansings." The *New York Times* has called the significantly female

MEK an "army of Stepford wives." In March 2006, one member, Zeinab Taleb-Jedi, was arrested at JFK airport as she returned to the U.S. for medical treatment. Based on testimony of two informants, the government alleges that she provided the MEK "support," i.e., herself.

The case is bizarre on several levels. First, though the MEK did target Americans back in the 1970s, it hasn't attacked anybody in more than seven years and was classified as a terrorist group in 1997 as part of a rapprochement effort with Iran. Second, the MEK is dedicated to regime change in Iran—just like the Bush administration. Third, Camp Ashraf, the group's Iraqi base, where Taleb-Jedi lived and taught English, has since 2003 been under the control of U.S. forces, which have allowed the MEK to continue training (albeit without arms) and broadcasting propaganda into Iran. An American commander in the area called for "a review of whether they are still a terrorist organization" as has Senator Sam Brownback (R-Kan.) and administration neocons.

Meanwhile, the 52-year-old Taleb-Jedi—this supposed threat to America—is out on bail, living in a homeless shelter in New York City.

### **Hemant Lakhani**

**U.S. CITIZEN?:** No (Indian-born Briton)

**INFORMANT:** FBI (also Russia's FSB)

**CHARGE:** Selling missile to Somali jihadist

**TWIST:** Terrorist fake, missile fake; Lakhani paid by IOU

**OUTCOME:** Sentenced to 47 years

When Hemant Lakhani was arrested in August 2003, President Bush declared it "a pretty good example of what we're doing in order to protect the American people." Sadly, he may be right.

Lakhani, 72, was the ultimate middleman, selling everything from clothes to oil. At one point, he'd arranged the legal sale of armored personnel carriers to the Angolan government. Perhaps for that reason, after 9/11 Lakhani was approached by an FBI informant posing as a Somali jihadist who said he wanted anti-aircraft missiles for a plan to "hit the people over here." Lakhani, whom friends describe as a "loser" who always fell for a get-rich-quick scheme, promised, "It will be done." "Do these people also have submarines?" asked the informant. "Yes," Lakhani assured him, "they're expert in this."

Over the next year, Lakhani crisscrossed the Ukraine in an unsuccessful bid to get the missiles. Eventually, the Russian police learned of his efforts and, working with the FBI, sold him an inert missile. For which he paid with a promissory note.

When Lakhani presented the fake missile to the fake terrorist, he was arrested for real. He was convicted of attempting to provide material support and sentenced to 47 years. At least one juror regrets voting to convict. He "wasn't never gonna get no missile," Gussie Burnett told *This American Life*. The FBI "knew he wasn't gonna get one either. That's

why they bought it and set it right there in his lap. Because as far as I'm concerned, the man was entrapped. I shoulda held out."

### **Kumar the Fisherman**

**U.S. CITIZEN?:** No (Sri Lankan)

**CHARGE:** Providing money to Tamil Tigers

**TWIST:** Money in question was his own ransom.

**OUTCOME:** Awaits ruling on deportation, like 500 others in his shoes

Kumar holds the curious distinction of being considered a terrorist and a terrorist victim—for the same act. A Sri Lankan fisherman with a soft, friendly face, Kumar told me his story while sitting in a Department of Homeland Security jail in New Jersey. (He asked that his full name not be used.)

After being kidnapped by Tamil Tigers in late 2004, Kumar paid the guerrilla group a partial ransom. Then the tsunami hit; Kumar lost his boat and couldn't pay the Tigers the rest. So he fled, eventually landing at Newark Airport, where he told customs officials his story and asked for asylum. Their response: throwing him in detention for giving material support (ransom) to a designated terrorist group (the Tigers).

Kumar isn't the only immigrant hit with such charges. Provisions slipped into the Patriot Act expanded the immigration material-support laws to absurdist extremes, defining a terrorist group as any two or more people who rebel against their own country. (When an immigration official pushed a DHS lawyer about whether the Iraqis who helped Jessica Lynch would be banned under the law, he sputtered, "Indeed. I mean, the position of the Department is, is extremely broad.") There are about 500 cases like Kumar's, people who have claimed asylum but had their case flagged because of providing material support that in all likelihood was forced. Just 29 have been given exemptions.

After 30 months in detention, Kumar was recently paroled and awaits a ruling. That's the good news. The bad news is that, officially, he's still a terrorist.

### **The L.A. Eight**

**U.S. CITIZENS?:** No (seven Palestinians and one Kenyan)

**CHARGE:** Distributing magazines for a Palestinian group

**TWIST:** First material-support case in history

**OUTCOME:** 20 years later, the L.A. Eight finally cleared.

In the early 1980s, an FBI agent was investigating a handful of men in Los Angeles who he believed were supporters of a Marxist Palestinian guerrilla group known as the pflp. The agent never turned up evidence of criminal activity. The only thing he found was that the men had distributed magazines for a charity linked to the group. That didn't stop the

feds. On January 26, 1987, immigration agents stormed their homes. "They came in with a subpoena for a magazine," Khader Hamide told the *Los Angeles Times*. "No baseball bats, no guns, no whatever. Because they knew: I ain't got none."

At first, the government tried to deport the men under a dusty McCarthy-era law that allowed immigrants to be deported if they were members of a communist organization. The courts soon declared that law unconstitutional. But the defendants—who became known as the L.A. Eight—weren't in the clear. In 1990, Congress repealed most of the anti-communist law but passed one that banned any immigrant who "affords material support" to "terrorist activity." The terms were broadly defined, and the government, in its inaugural use of the law, went after the L.A. Eight for supporting terrorists by...handing out magazines.

The case wound its way through the courts for 20 years. The L.A. Eight almost got off time and again only to see Congress tighten the material-support laws and prosecutors refile the charges. Last year, a judge threw out the case for the final time, citing the Bush administration's refusal to hand evidence over to the defense. His sum-up of the saga: "an embarrassment to the rule of law."

### **Yassin Aref & Mohammed Hossain**

**U.S. CITIZENS?:** No (Iraqi Kurd); yes

**INFORMANT:** FBI

**CHARGE:** Laundering "terrorist" money

**TWIST:** Defendants also targeted by NSA wiretapping program

**OUTCOME:** Each sentenced to 15 years

In 2003, after U.S. soldiers in Iraq found a notebook at a militant camp containing the name of an Albany imam, Yassin Aref, the FBI sent an informant to upstate New York. (It appears as though the NSA also started monitoring the imam's phone calls.)

The informant, facing jail time and deportation in an unrelated case, courted a friend of the imam's, pizza parlor owner Mohammed Hossain (pictured above). Spinning a long tale that involved buying a Chinese missile to attack a Pakistani diplomat living in New York City, he offered to give Hossain \$50,000 in cash if Hossain would give him back \$45,000 in checks. Hossain told the informant he opposed "violent jihad," but he was tempted by the \$5,000 transaction fee. Aref was drawn in to be a witness to the loan, as required by Islamic law. A jury acquitted Aref of most other charges against him, but one stuck: conspiring to provide material support. The men are now serving 15 years each. "You can't put a percentage on how likely these guys would have been to commit an act of terrorism," said the lead prosecuting U.S. attorney, "but if a terrorist came to Albany, my opinion is that these guys would have assisted 100 percent."

### **Hamid Hayat**

**U.S. CITIZEN?:** Yes

**INFORMANT:** FBI paid him \$230,000

**CHARGE:** Having "jihadi heart and a jihadi mind"

**TWIST:** No evidence of jihadi actions

**OUTCOME:** Sentenced to 24 years

When Hamid Hayat was arrested in June 2005, President Bush praised the arrest for helping to "bust up these terrorist networks." But just *what* network is still a mystery. After receiving a tip about Muslim radicals in Lodi, California, the FBI hired a former resident, Naseem Khan, to be an informant. Khan befriended Hayat, who was recorded making some odious statements. Speaking of Daniel Pearl's murder, Hayat proclaimed, "I'm pleased about that. They cut him into pieces and sent him back." But as one FBI agent acknowledged during his trial, Hayat's talk was "more boasting than actual substance." When Khan talked about jihad, Hayat scoffed, "No, man, these days there's no use in doing that." When Hayat traveled to Pakistan to look for a bride, Khan called and castigated him: "You sound like a fucking broken bitch. Come on. Be a man. Do something."

Prosecutors focused on Hayat's confession, after an extended interrogation, that he had attended a training camp for militants. But Hayat recanted and the government never identified which camp Hayat supposedly attended or who controlled it.

The jury, unaware of the possible sentence that Hayat faced, convicted (though one member later recanted her vote). "We're not being asked, 'Did the defendant commit the crime?'" the jury's foreman, Joseph Cote, told *The Atlantic*. "Now you're being asked, 'Is the defendant capable of doing a crime?'...That's what made the verdict so tough. Because we thought in the gut, 'Maybe he may not do it.'"