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DAMNED IF THEY DO, EVEN IF THEY COULD

Pressures to make arrests distract FBI agents from pursuing worthwhile targets

By Julius (Jay) Wachtel. How many terrorist attacks have we had in the U.S. since September 11, 2001? None, of course. How many attempts? Hint: You can count them on the fingers of one hand, even if you bite four digits off.

That's right, *one*. It was [Richard Reid](#), aka Abdul Raheem, a British-born Jihadist who tried to blow himself up aboard an American Airlines flight from Paris to Miami in December 2001. Reid, who's now safely tucked away in a Super-Max room-and-board, was part of a three-man European cell that intended to down airliners with shoe bombs. Fortunately, an alert flight attendant smelled smoke from Reid's matches (fuses aren't supposed to be lit that way, but that's another story). So be nice to flight attendants, and be sure to flip Reid a hearty salute every time you stick your shoes in an airport tray.

According to the good folks at [FOX News](#) there have been fourteen terrorist plots aimed at America or Americans since 9/11. Of these, only Reid's went operational, the others being mostly comprised of wannabees who had to be talked into everything by informers. For example, in the [Sears Tower plot](#), six Muslim men were enticed by a paid snitch to help him blow up a skyscraper and bomb FBI offices. At their second trial (the first ended in a hung jury) one defendant was acquitted outright, while jurors deadlocked on the rest. (A third trial is pending.) Then there's the case of the [Fort Dix Six](#), where the FBI paid another informer to convince six Muslims to agree to assault a military base. Set for trial later this year, the case drove *Time* magazine to strongly criticize the FBI's habit of proceeding "almost entirely on the work of a paid informant with a criminal record."

Essentially the problem boils down to this. At heart the FBI is a law enforcement organization. Under heavy pressure to nab terrorists, but lacking actionable intelligence and the know-how to collect and analyze it, the Bureau turned to what it knew: making criminal cases. Unable to infiltrate real terror cells with undercover agents, the FBI used informers to cajole and manipulate targets of opportunity until they did or said enough to be arrested on conspiracy charges. If it sounds like the FBI's been making a bunch of bad "B" movies on the taxpayers' dime you wouldn't be far off.

Clearly not all FBI agents are happy about this. In recent testimony before the [House Judiciary Committee](#) one of the Bureau's few native Arabic speakers criticized

his agency for focusing on minor cases, thus “diverting resources from investigating more substantial threats.” Meanwhile the [Senate Intelligence Committee](#) took its own swing, accusing the Bureau’s antiterrorism program of being helplessly stuck in law-enforcement mode. Finding little progress since 2005, when the 9/11 Commission gave the FBI a “C” report card, Senators criticized it for everything from inept intelligence analysis to using specialized anti-terror groups for unrelated law enforcement tasks.

Reading between the lines it seems that Congress wants FBI terrorism investigators to stop playing policeman so they can root out terrorist threats before more buildings come tumbling down and more aircraft fall from the sky. That’s a tall order for agents who signed up to make cases, not sit in vans and listening posts for hours on end, and a nearly impossible one for an agency whose success has always been measured by numbers of arrests.

When it comes down to it, everyone wants tangible results. Hands at the [Los Angeles Times](#) are wringing over the fact that while the number of electronic surveillance warrants steeply increased, the number of terrorism cases referred for prosecution steeply *decreased*. According to statistics collected by [TRAC](#), a nonprofit group at Syracuse University, the Justice Department initiated fifty percent fewer national security prosecutions in 2007 than 2002 (actual drop, from fifty cases to twenty-five). Meanwhile, refusals to prosecute have climbed from about thirty percent to more than eighty percent of referrals.

Now, some might say that this is good news, reflecting a greater depth of casework and perhaps higher prosecutorial standards. But the *Times* isn’t sure. “Although legal experts say they would not necessarily expect the number of prosecutions to rise along with the stepped-up surveillance, there are few other good ways to measure how well the government is progressing in keeping the country safe.”

That in a nutshell is the FBI’s dilemma. Experts inside and outside the Bureau agree that to protect the country it needs to place more emphasis on collecting intelligence and less on roping in dopes and staging show trials. But taking the high road might lead to even fewer arrests, leading politicians and the public to conclude that the Feds aren’t doing their job.

One person got it right. [Thomas Newcomb](#), a former national security staff member, told Congress that military action and diplomacy are more suited for defeating terrorism than going to court. “The fact that the prosecutions are down doesn’t mean that the utility of these investigations is down. It suggests that these investigations may be leading to other forms of prevention and protection.” Unfortunately, prevention isn’t readily measurable while making arrests *is*, so that’s

what the FBI feels it must keep doing even if everyone agrees it's the wrong approach.

Incidentally, that's precisely the reason why intelligence work should be done by a specialized agency, not by a law enforcement organization. For more on this see the postings below.