

# **TERRORISM ESSAYS**

**By Julius Wachtel**

As originally published in  
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Posted 3/31/16

## AFTER THE FACT

### *Ordinary policing strategies can't prevent terrorism*

*By Julius (Jay) Wachtel.* With the deadly attack in Brussels only a week old, the world sits and waits for the next shoe to drop...and the next one after that. Meanwhile the media delivers the usual talking heads, each breathlessly attributing the carnage to a deplorable failure of police and intelligence agencies to recognize what must have surely been right under their noses.

Belgium was already in the hot seat as the place where the November 2015 terrorist strikes in Paris were organized. Less than a week after Belgian commandos captured the last known participant in those attacks – he had supposedly been under their noses all along – two Belgian-born brothers took part in the slaughter in Belgium. Western Europe's so-called "battleground state" is no longer merely a source of recruits for ISIS but a target as well.

How could Belgian authorities have been so ignorant? The pair who ultimately blew themselves up in Brussels [were notorious gunslingers](#), having done hard time for robbery, shooting at police and carjacking. One had even been deported from Turkey for trying to join the jihad, and both were being sought for questioning in connection with the Paris massacre.

Actually, when it comes to being clueless Americans are no laggards. Consider the [February 1993 bombing of the World Trade Center](#), when an explosives-laden rental truck blew up in a parking garage, killing six and wounding more than a thousand. Two Al Qaeda operatives, [Ramzi Yousef and Ahmad Ajaj](#), arrived in New York City five months earlier to organize the attack. Both had been on the same flight from Pakistan but pretended not to know each other. On arrival, Yousef produced an Iraqi passport and applied for asylum. Helpful officials gave him a hearing date and sent him on his way. Ajaj wasn't as lucky. Inspectors discovered bomb-making instructions in his luggage and concluded that his passport (from Sweden) had been altered. Ajaj got six months for passport fraud while Yousef carried on. Assisted by extremists connected with a New York mosque, he acquired explosives, built a bomb and set it off. [FBI agents later conceded](#) that they were well aware of Yousef's helpmates and had even placed an informer in their cell. Alas, their source was "deactivated" shortly before the attack.

Eight years later the World Trade Center got hit again, and with far more lethal consequences. [According to an official account](#), in the months before 9/11 "the system was blinking red," with a "high probability of near-term spectacular attacks" by Al Qaeda. FBI agents and CIA analysts knew that foreign militants linked to the terror group were in the U.S. Indeed, it turns out that at least two had participated in the 2000 bombing of the *U.S.S. Cole*. At the time, though, foreign intelligence was a relatively uncoordinated affair, and agencies had little sense of what a real terrorist threat might look like. In hindsight, two lapses stand out. Months before 9/11 a Phoenix FBI agent authored a detailed memorandum warning that terrorists were attending flight schools in the U.S., possibly in connection with a plot to bomb airliners. His concerns went unheeded by superiors. An even bigger intelligence failure was in relation to hijacker Zacarias Moussaoui, a French national. While enrolled in a Minnesota flight school he behaved so oddly that instructors took the extraordinary step of contacting the Feds.

Immigration and FBI agents ultimately arrested Moussaoui on a visa violation one month before 9/11, taking him out of the game but gaining no clues as to what was just around the corner. Moussaoui eventually pled guilty to conspiracy to commit terrorism and is doing life without parole.

Before 9/11 a so-called legal and procedural “wall” effectively separated intelligence-gathering and law enforcement (click [here](#) and [here](#).) After 9/11 cooperation within and between agencies supposedly improved. Many existing departments, including the Secret Service, Customs, Immigration and the Border Patrol were placed under the umbrella of the nation’s new uber-watchdog, the Department of Homeland Security. But the prime movers and shakers in the counter-terrorism world – the CIA and FBI – weren’t included.

What did all the tinkering accomplish? In terms of prevention, precious little. As we detailed in previous posts (click [here](#) and [here](#)), virtually every major Federal terrorism case after 9/11 – from the “[Liberty City plot](#)” of 2006, when seven “homegrown terrorists” conspired to bomb FBI offices and Chicago’s Sears Tower, to the February 2012 arrest of a Moroccan national [moments before he tried to blow himself up](#) in the U.S. Capitol – was stage-managed from the start, with vehicles, “bombs” and mega-doses of encouragement helpfully supplied by informers and undercover agents.

There was [one notable exception](#). In the summer of 2009 FBI agents got wind that Colorado resident [Najibullah Zazi](#), a Pakistani immigrant, had received bomb-making training from Al Qaeda during a visit home. When he returned to Colorado Zazi began buying grooming products whose ingredients could be used to make bombs (incidentally, much like those recently used in Brussels.) Dozens of agents were soon on the case. They followed Zazi to New York City, where NYPD helped track his movements. Alas, the net was so tightly drawn that Zazi learned the authorities were watching. He returned to Colorado and was arrested within days. FBI agents discovered bomb-making instructions in Zazi’s computer and discovered that he had experimented making bombs before setting out for the Big Apple. Zazi eventually pled guilty to plotting to bomb the New York City subways and got life without parole.

What lessons can be learned from the one case that *wasn’t* a “rope-a-dope”? First, going after terrorists consumes enormous human and material resources. It takes squads of agents to monitor a single suspect 24/7, and with thousands of possible evil-doers, one cannot check out every suspicious character or situation. Still, the consequences of terrorism can be so grave and unsettling that simply making [arrests “after the fact,”](#) as in ordinary crimes, is unacceptable. When it comes to terrorism, prevention is crucial.

Of course, interrupting plots requires timely information, and plenty of it. Investigators also need ways to pick out the gems hidden in the data. Zazi was apparently done in by the [NSA’s once-secret PRISM program](#). As the software hacked through piles of international e-mail, it caught Zazi corresponding with an Al Qaeda operative whose address had been flagged in the system. Fortunately, his e-mail wasn’t encrypted.

Blame for the Paris and Brussels attacks was laid, in large part, on a dysfunctional relationship among European law enforcement and intelligence agencies, not unlike the lack of cooperation that’s long bedeviled relationships between the FBI and CIA. [Impediments to the timely analysis](#), sharing and dissemination of actionable intelligence were addressed in excruciating detail by the 9/11 Commission, so we won’t belabor them here. In final analysis, our first (and last) lines of defense are physical. With oceans and friendly countries on each border, America holds the trump card of geography. Yet neither Zazi nor

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the 9/11 suspects snuck in. Zazi was a legal immigrant, while the 9/11 suspects came over on [business, visitor and student visas](#).

How did our elaborate immigration systems fail? Perhaps because they're really not so "elaborate." According to 9/11 investigators, vetting relied almost exclusively on name checks:

When we examine the outcomes of the 9/11 conspirators' engagement with the visa issuance process, we see they are consistent with a system focused on excluding intending immigrants and dependent on a name check of a database to search for criminals and terrorists. When hijackers or conspirators appeared to be intending immigrants, as happened most often when applicants were from poorer countries, they were denied a visa. If they met that threshold, however, and the name check came up clean, there was little to prevent them from entering the United States.

After the attacks [the visa process was reportedly tightened](#). But pressures to admit visitors remain substantial. With our ability to make sense of electronic chatter [increasingly compromised by encryption](#), keeping evil-minded individuals out of the U.S. obviously calls for new paradigms. What these may look like remains a work in progress.

Posted 11/23/15

## **SOMETIMES THERE IS NO “SECOND CHANCE”**

### ***Preventing horrific terrorist attacks may require new legal rules***

By Julius (Jay) Wachtel. Last week, at a gathering of cybersecurity experts, an exasperated CIA Director conveyed the intelligence community’s growing frustration over restrictions imposed on its information-gathering capabilities:

In the past several years, because of a number of unauthorized disclosures and a lot of hammering over the government’s role in the effort to try to uncover these terrorists, there have been some policy and other legal actions that make our ability – collectively, internationally – to find these terrorists much more challenging.

Not that those wielding the “hammers” lacked a reason. Perhaps the most eye-popping of the “unauthorized disclosures” took place nearly a decade ago when *USA Today* blew the whistle on “Mainway.” This was no ordinary program. Kicked off in great secret soon after 9/11, it had been vacuuming up the particulars (but not the content) of nearly every domestic and international telephone call originating in the U.S., including date, time, duration and the identities of subscribers on both ends. With the cooperation of America’s telephone carriers, and unencumbered by judicial oversight (after all, it was just a “catalogue”), Mainway had ballooned into a repository of *hundreds of billions* of entries.

Daylight didn’t sink the effort. Despite substantial public concerns about *why*, the administration swiftly anointed Mainway as a “business record” and placed it under the purview of the the Patriot Act. FBI agents then kept things chugging along with perpetually renewable 90-day orders issued by a secret intelligence court. Finally in 2015 a Federal appellate panel ruled that the Patriot Act was, um, *inapplicable*. To head off a nasty dispute, Congress enacted the “Freedom Act.” Mainway was ordered to cease operation by December 2015, and the information it collected would henceforth remain with the carriers and be obtained through conventional means, that is, by demonstrating probable cause to a judge on a case-by-case basis.

Mainway wasn’t the only extraordinary tool in the government’s intelligence arsenal. According to Edward Snowden and other whistleblowers, the events of 9/11 triggered numerous efforts to mine assumedly protected communications. Among these is a project that resembled Mainway but focused on Internet-based chatter, primarily e-mails, where at least one party to the communication was outside the U.S., or “for which no communicant was known to be a citizen of the United States.”

Neither Mainway not its e-mail twin warehoused content. Other programs did. Secret government documents published in 2013 by the *Washington Post* revealed NSA’s “PRISM” initiative, which downloaded e-mail, text, voice and data messages directly from the computer servers of Microsoft, Yahoo, Google, Facebook, Pal Talk, AOL, Skype, YouTube, and Apple. Querying this database required that FBI analysts demonstrate “fifty-one percent confidence” that their targets were foreign nationals located overseas. Another initiative, “NUCLEON,” apparently did the same for telephone calls, spurring

complaints that it clashed in spirit if not substance with laws requiring that warrantless interceptions have the consent of at least one party to a communication.

Here it's probably useful to bring in an example. Your author spent most of his career chasing after gun traffickers. One source of information was a database that stored the sales history of guns recovered by police. Scanning these entries identified possible illegal resellers, and surveillance occasionally led to catching them in the act. Just like in drug and other conventional crimes, their arrest was nearly always "after the fact." That was thought perfectly acceptable.

But terrorism is different in two important ways. Its potentially catastrophic consequences scream that there be no "first time." Terrorist organizations also leave few clues and are notoriously difficult to penetrate. So it's hardly surprising that investigators are greedy for anything they can get. Maybe – just maybe – that additional straw will help recognize a pending threat. Therein lies the rub, as gathering terrorism intelligence is bound by the same legal strictures that apply to ordinary crime. That's a source of deep frustration for intelligence executives. One potential adjustment might be to lower the evidentiary standard for interceptions from probable cause to, say, "reasonable suspicion," the criterion for stop-and-frisk.

And there's a new complication. Message encryption has become commonplace in the Internet. Until recently device makers and service providers held on to decryption keys and made them available on presentation of a court order. New hardware and software designs, though, prevent decoding without a user password. At a [recent gathering of cybersecurity professionals](#), Manhattan D.A. Cyrus Vance complained that Apple's implementation of these protocols in their new iPhones frustrated more than one-hundred interceptions sought by his office this past year:

Last fall, a decision by a single company changed the way those of us in law enforcement work to keep the public safe and bring justice to victims and their families. We risk losing crucial evidence in serious cases if the contents of passcode protected smartphones remain immune to a warrant.

Warning that ISIS was already using encryption technology, another speaker, FBI Director James B. Comey, delivered an even gloomier assessment. Privacy advocates, device makers and even the *New York Times* reporter who wrote about the session reacted skeptically. After all, French detectives found the organizer of the recent Paris attack thanks to an (unencrypted) message left on a female jihadist's discarded cell phone. Of course, in the brave new world of perfect anonymity, all that the bad guys (and gals) will need to prevent future slip-ups is readily available at the Apple store.

Posted 4/28/13

## A FEARFUL NATION

### *Is extremism in the defense of liberty a virtue?*

*By Julius (Jay) Wachtel.* On the morning after Boston, with the nation reeling from the violent deaths of three innocent persons and the grievous wounding of scores of others, a prestigious nonpartisan committee (its co-chairs were former Congressmen - one a Democrat, the other Republican) issued a thick [report](#) documenting the torture and mistreatment of terrorism suspects, and attributing ultimate responsibility to “the nation’s most senior officials.” Meaning, of course, two Presidents.

It was a lousy time for a human rights lesson. As grisly images of blood and severed limbs shocked the nation, members of Congress were already demanding that the surviving bomber, Dzhokhar Tsarnaev, a naturalized American citizen arrested on American soil, be turned over to the military as an enemy combatant. Although that didn’t happen, the FBI used the public safety exception to justify questioning Tsarnaev for hours without advising him of his rights or providing a lawyer. Then, when a magistrate finally arrived, our elected guardians of the Constitution bitterly criticized Federal agents for obligingly stepping out of the way.

True enough, delaying *Miranda* is not per se illegal. Not reading someone their rights doesn’t invalidate an arrest - it merely makes anything they say inadmissible in court. In any event, Tsarnaev is no longer cooperating. Once the judge advised him that he was entitled to an attorney and didn’t have to talk the accused terrorist went mum. As one might expect, that instantly drove pundits to accuse the Feds of bumbling the case.

Fears of terrorism have spurred a host of unpalatable practices. Remember Guantanamo? A hunger strike at America’s infamous penal colony has spread to more than half the facility’s 166 prisoners, none yet adjudicated. Authorities are responding with a brutal force-feeding campaign. (We say “brutal” because that seems the most accurate way to describe the shoving of tubes up nostrils without consent. It’s led [critics to demand](#) that participating physicians be stripped of their State licenses.)

It seems inevitable that the “War on Terror” will diminish the craft of policing. Consider the [FBI stings](#) that, in an insidious mimicry of legitimate undercover work, have lured oddballs, wannabes and big talkers into accepting bombs from strangers. Although the Supremes have yet to weigh in, lower courts have held that the investigative techniques, however deplorable, didn’t amount to illegal entrapment. But in most of these cases it seems questionable that, absent the FBI’s involvement, any crimes would have really been committed.

Horrific episodes such as 9/11, Oklahoma City and now, the Boston bombing make it difficult to discourage the government from seeking shortcuts. So if appeals to conscience don’t work, the only thing left is to point out that neither do extralegal measures. Does torture generate useful leads? No, concluded the committee that investigated our treatment of terrorism suspects. All the abuse accomplished was to diminish us in the eyes of the world, and probably our own.

Most cops want to do the right thing. Indeed, by all accounts the FBI and local police did a splendid job collecting evidence in Boston. Unfortunately, their efforts stand to be tarnished by Tsarnaev's protracted interview outside *Miranda*, which went on far longer than the few moments allowed by the Supreme Court in *Quarles*. And what was gained by this? Nothing. Dzhokhar Tsarnaev reportedly told the FBI that no one besides himself and his late brother Tamerlan were involved.

In the end, whether or not he was being truthful won't be resolved through beatings or torture. A lot of good police work will be needed to figure out if the brothers had help. Turning to extralegal measures can only taint the findings. It's a lesson that some cops and politicians apparently have yet to learn.



Posted 2/25/12

## WRITTEN, PRODUCED AND DIRECTED

### *A disturbing legacy of roping in dopes, with no end in sight*

*By Julius (Jay) Wachtel.* [Jose Pimentel](#) was having trouble drilling little holes in big pipes. He didn't know it, of course, but he was fumbling on video.

For two years the 27-year old naturalized citizen (he's originally from the Dominican Republic) had been hanging out with a police informer who lived in the same building. Pimentel's increasingly odd behavior – he once tried to circumcise himself – had estranged him from his wife and led his own mother to kick him out. So the unemployed, emotionally troubled man had taken to smoking pot and talking Jihad with someone who pretended to be his friend. Pimentel had once yakked about going to Yemen for terrorist training but never followed through. But when a CIA drone dropped a bomb on his hero Anwar al-Awlaki last year, permanently taking the fire-breathing cleric out of the terrorism business, Pimentel was outraged.

That's why the pipe bombs. With hundreds of hours of recorded meetings in hand, NYPD detectives offered the case for Federal prosecution. Worries about Pimentel's mental state and his inability to make the devices without the informer's help led the FBI to turn it away. Still, Pimentel had talked about [killing returning military veterans and bombing post offices and a police station](#), and thanks to the informer's encouragement and assistance had acquired enough parts to assemble three pipe bombs. "We weren't going to wait around to figure out what he wanted do with his bombs," a cop explained. So NYPD decided to proceed on its own. Officers arrested Pimentel and booked him on State crimes including possessing a weapon for terrorist purposes and terrorist conspiracy. And that's where things now sit.

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When FBI agents arrested [Amine El Khalifi](#) a week ago the unemployed 29-year old Virginia man was about to mosey over to the Capitol, detonate his nail-packed explosive vest and kill as many infidels as possible. Pesky security personnel who got in the way would be liquidated with a MAC-10 submachinegun. Fortunately, the Feds had been monitoring El Khalifi for months. So closely, in fact, that they were there, right next to him.

Actually, there was no risk, as the gun and explosive vest were inert props given to Khalifi by an FBI undercover agent. An illegal alien from Morocco (he arrived on a tourist visa when he was 16 and never left), he had been under watch since January 2011, when an informer reported Khalifi's desire to "go to war" against the U.S. over its mistreatment of Muslims. In December Khalifi reportedly got serious. After considering targets such as a synagogue and a military building, he finally settled on the Capitol. Khalifi decided to become the weapon that would kill at least thirty and send him to the place where the maidens are.

Thanks to the Government he was well prepared. Khalifi, the informer and an undercover agent posing as an emissary from al-Quaeda practiced detonating explosives at a quarry. They did test-drives by the Capitol. Khalifi even strutted around a motel room simulating firing the MAC-10 while wearing the vest. The only thing he didn't rehearse was his own arrest.

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As our prior posts reflect (see "Related Posts," below) the FBI has an extensive track record of leading would-be terrorists by the nose and into prison. That not one has been able to successfully raise entrapment is eloquent evidence of [the impotency of the defense](#) in the face of careful Government staging.

Here is a typical [Federal jury instruction for entrapment](#):

...the government must prove beyond a reasonable doubt either (1) that, before contact with law enforcement, the defendant was ready and willing or had a predisposition or prior intent to commit the offense, or (2) that the defendant was not induced or persuaded to commit the offense by law enforcement officers or their agents.

Note the *or* preceding item 2. All that must be done to prove someone wasn't entrapped is to show that they were predisposed. Bragging about yearnings to blow up infidels usually suffices. Pressures to prevent terrorist attacks, the need to justify the expenditures and realignments that doing so requires, and the rewards that accede to those who chalk up terrorism "wins" have led police and the FBI to take facilitation to new extremes.

Judges are of course well aware of the implications of the new undercover work. Not all are pleased. Here's what one had to say about [another case](#) in which the FBI furnished make-believe bombs:

Did the government become aware of potential criminal activity and take action to neutralize a real terrorist threat or did it locate some disaffected individuals, manufacture a phony terrorist plot that the individuals could never have dreamed up or carried out on their own, and then wrongfully induce them to participate in it?

Well, back to our two dopes. Why did the FBI pursue Khalifi but turn up its nose at Pimentel? On first glance they don't seem that different. Both were loners caught up in grim situations. Like other losers of whatever stripe, they had taken to spouting vicious rhetoric as an excuse for personal failures. It was bad luck that they drew the attention of crafty informers who skillfully guided them towards the convenient, ready-made solution of martyrdom.

What makes the Pimentel case different is that it lacks key features that have turned FBI rope-a-dopes into an art form. There was no live-fire exercise, no training for the mission, no finished bomb and no scouting of targets, as none had been settled on. Worse, much of the crazy talk happened during pot-smoking sessions. Pimentel was arguably predisposed, but after two years without the intercession of an undercover agent the informer's role loomed uncomfortably large. It's likely that the Feds passed on the case from fears of having a judge or jury say "no." Perhaps DOJ was worried about creating bad law. What if the entrapment defense grew some teeth?

Still, after all the encouragement, Pimentel and Khalifi were undeniably loose cannons. What options were there other than arrest? Perhaps the best solution would have been not to rope them in. With rare exceptions such as [Faisal Shahzad](#), the Times-Square blunderer, most post-9/11 prosecutions of Islamic “terrorists” involve elaborately stage-managed setups written, produced and directed by the FBI. One can only imagine how many we don’t know about because for one reason or another they didn’t work out. If something had to be done, odd-duck Jose Pimentel could have been remanded for a mental evaluation well before he issued his umpteenth threat. El Khalifi should have simply been deported at the very start.

As your blogger can attest from his own undercover experiences, it’s easy to snare opportunists. (For his academic article about such things, click [here](#).) If for no other reason than self-respect, good cops focus on real criminals. They seek to prevent, not create crime. What the FBI and NYPD have devised is something else altogether. Using a doomsday excuse to justify working up tormented men into a frenzy of hatred while manipulating them just-so to satisfy legal requirements is unconscionable. That it’s become accepted practice demonstrates just how easily fear and ambition can override our better judgment. Alas, that’s a lesson that mankind has yet to learn.

## DOING NOTHING, REDUX

*What's more frightening than terrorism? Relying on analysts to prevent it.*

What we are focused on is making sure that the air environment remains safe, that people are confident when they travel. And one thing I'd like to point out is that the system worked...The passengers and crew of the flight took appropriate action...Within literally an hour to 90 minutes of the incident occurring, all 128 flights in the air had been notified to take some special measures...So the whole process of making sure that we respond properly, correctly and effectively went very smoothly.

*By Julius (Jay) Wachtel.* Homeland Security chief Janet Napolitano's pitiful attempt to deflect blame for letting a bomb-carrying terrorist board a U.S.-bound plane didn't work. Only a day later, as [Al Qaeda openly gloated](#) about an operation that "penetrated all modern and sophisticated technology and devices and security barriers in airports of the world," the would-be spinmeister was forced to concede that the system had really *not* worked, at least not in the way that really matters.

Unfortunately, it will take a lot more than a Presidential scolding to improve flight security. It seems that [the vaunted "system" installed after 9/11](#) is hopelessly porous, with all measures short of a strip search having proved incapable of stopping determined evildoers. Although Homeland Security insists that every security checkpoint will soon be equipped with machines that can detect liquid explosives, PETN, the substance used in this episode (and earlier, by shoe bomber [Richard Reid](#)) is a powder. Canines and wildly expensive electronic sniffers that can detect vapors from PETN and other explosives are tied up screening checked baggage. Meanwhile deployment of phenomenally costly full-body scanners is on hold due to privacy concerns.

What about intelligence? Weren't analysts sitting at glowing terminals supposed to be the solution? Indeed, America's first line of defense, the [FBI Terrorist Screening Center](#), maintains a "Consolidated Terrorist Watchlist" listing 550,000 persons suspected of terrorist ties. Most are foreigners. For reasons of efficiency [TSA usually checks passenger lists](#) against two subsets of individuals considered to pose the greatest threat, a "no-fly" list of 4,000 persons who are flat-out prohibited from boarding commercial aircraft, and a larger group of 14,000 "selectees" who must be thoroughly searched. (For the controlling Government regulations click [here](#). Numbers given are the latest reported.)

Alas, Umar Abdulmutallab was only on the master list, so when he got to the airport he was treated just like you and me (assuming that you're not a bad guy, of course.) [Why he wasn't flagged for a more thorough search](#) demonstrates just how fragile a process security screening really is.

A Nigerian national from a rich family, Abdulmutallab was enrolled at a prestigious London university between 2005-2008 and presided over the student Islamic society. On graduation he acquired an American multiple-entry visitor's visa, good for two years, and briefly vacationed in Houston. In January 2009 he attended a college in Australia. In May he tried to renew his British student visa using the name of a bogus college that was known to serve as a front for illegal immigration. That got him permanently barred from Great Britain. No matter – by August he was in Yemen, purportedly to study Arabic. Before dropping from sight he sent his parents text messages mentioning his radical intentions and saying that his family should forget about him. His alarmed father alerted his own government and went to the American embassy, where he met with officers from the State Department and CIA. But the kid remained unmolested. After meeting with an Al Qaeda cell in Yemen, he returned to Nigeria and flew to Amsterdam, where he boarded his final flight to the U.S.

As one might expect this episode has provoked a great deal of finger-pointing. Britain never told the U.S. that it placed the youth on a no-entry list. Despite the father's anguished warning the State Department didn't revoke the son's visa. Neither did the CIA tell the FBI that it had opened a file on Abdulmutallab. An NSA alert about an Al Qaeda attack that was to be carried out by an unnamed Nigerian national was filed and forgotten. And so on.

Now wait a minute: wasn't creating a new über-agency, the Department of Homeland Security, intended to correct the lapses in coordination and information sharing that supposedly contributed to 9/11? Sure. But while less-potent bureaucracies such as Customs, Immigration and the Secret Service got yanked from their former homes and placed under a single umbrella, the three national security organizations that really matter – the FBI, CIA and NSA – have way too much political clout and to this day remain virtually independent.

Yes, the system is hopelessly fragmented. But should that be blamed for what took place? As we pointed out in [Missed Signals](#), there is simply so much data and so little opportunity to do anything about it that anything other than an obvious red flag tends to get discounted. Really, the notion that those at the end of the information superhighway can successfully detect fast-moving conspiracies in time to avert a catastrophe is frightfully naive. Warnings that foreigners have it in for America aren't exactly in short supply. Analysts didn't know Abdulmutallab and they surely hadn't spoken to his father. It's a credit to the FBI that it placed the youth on any list at all.

In truth, the best opportunity to detect a threat isn't at a centralized analytical bureau that might as well be in another Galaxy – it's in the field. Just how often do wealthy former government ministers walk in to warn foreigners about their own sons? Had officers at the American embassy in Nigeria made a few calls and consulted a few databases they might have easily come up with enough to nix Abdulmutallab's visa, if not more.

But they didn't.

Had airport security officers or airline employees in Nigeria or Amsterdam paid attention to someone who was flying to the U.S. without checked baggage, on an airline ticket paid for in cash, they might have prevented a terrorist's boarding.

But they didn't.

When the everyday pressures of business are overwhelming it's awfully easy to rationalize things away – in effect, to do nothing. Let's review the closing paragraph from [Missed Signals](#):

Rare events such as mass murder are difficult to predict precisely because they *are* rare. Our best shot at preventing them lies in avoiding the urge to routinize and in paying close attention to the unusual and offbeat, like naked women falling from the sky and military officers e-mailing with terrorists.

We were referring to Cleveland serial killer [Anthony Sowell](#) and Fort Hood shooter [Nidal Hassan](#). Umar Farouk Abdulmutallab wouldn't come until later.

Posted 4/10/11

## THE LONG ARM OF THE LAW

### *America stings foreign arms and drug traffickers with a powerful narco-terror law*

*By Julius (Jay) Wachtel.* By all accounts [Victor Bout](#) was a self-made man. And when the Soviet Union fell the energetic Russian entrepreneur spied a great opportunity. The dissolution of the USSR had left vast pools of armaments scattered throughout Eastern Europe. None of the newly liberated lands had the resources or interest to continue fielding large armies. With everyone's attention focused on reconstruction, it was the perfect time for a sharp-witted, fearless man to profitably dispose of all the lethal junk laying around. Fortunately, many of those in power were corrupt holdovers from Communist days. Perfect!

Bout was soon one of the world's most prolific arms dealers, supplying warring parties of whatever stripe with everything from pallets of ammunition to assault helicopters. Gunships and missile launchers to Liberia? No problem. Aircraft to the Taliban? No problem. Surface-to-air missiles to the Middle East? No problem. And when the heat was on, like in 2002, when Belgium issued an arrest warrant charging him with money laundering, Bout scrambled back to Russia, where his connections – and perhaps his fortune – made him untouchable.

Witnesses at a [May 2003 Senate hearing](#) testified that many terrorist groups got money to buy weapons by trafficking in drugs. America frequently figured as a seller of the former and buyer of the latter. Examples given included the 2002 arrests, in Houston and San Diego, of representatives of South American and Middle-East terrorist organizations who came to America to buy everything up to and including anti-aircraft missiles, offering tens of millions in cash and drugs in exchange.

Until 2005 there was no authority to snatch foreigners for narcoterror plots conceived and executed outside the U.S. That's one of the oversights that the [Patriot Improvement and Reauthorization Act of 2005](#) sought to rectify. [Title 21, United States Code, section 960a](#), enacted in March 2006, makes it illegal to traffic in drugs, or to attempt or conspire to do so, with the intent to provide "anything of pecuniary value" to terrorists. Subsection (b) extends U.S. jurisdiction to proposed drug deals or acts of terrorism that would violate American law, affect interstate or foreign commerce, or injure Americans or American organizations based overseas. Jurisdiction also attaches whenever one of the perpetrators is American or if "after the conduct required for the offense occurs an offender is brought into or found in the United States, even if the conduct required for the offense occurs outside the United States."

In other words, should someone get hauled back to the U.S., jurisdiction is automatic. That's a *real* long arm of the law!

In October 2006 Colombian nationals Jose Maria Corredor-Ibague and Carolina Yanave-Rojas (aka Edilma Morales Loaiza) [became the first to be charged under 960a](#). According to the [indictment](#) the defendants manufactured large batches of cocaine and delivered their product to customers in nearby countries by plane. Ultimately the drugs were destined for South America, Europe and the U.S. Earnings in the form of cash, weapons and communications equipment went to the FARC, a designated terrorist

organization. Corredor-Ibague and Yanave-Rojas were extradited to the U.S. in 2008. A [2009 journal article](#) mentioned three other 960a cases made during that period. There was [Colombian paramilitary Jimenez-Naranjo](#), who sold cocaine to help support a 9,000-man army, [Khan Mohammed](#), a terrorist planner and Taliban associate who trafficked in opium, and [Haji Juma Khan](#), another Taliban associate who helped fund the group's activities by producing and marketing heroin.

Capturing wily narcoterrorists isn't always simple. In 2005 [Haji Bashir Noorzai](#), a Taliban associate and "global heroin trafficker" was lured to the U.S. by American government contractors, supposedly to instruct Government agents in the fine arts of financing terrorism. His teaching career lasted all of eleven days, when he was arrested and [indicted](#) for narcoterrorism. Whether Noorzai's claim that he never sent drugs to the U.S. is accurate we can't say, but it's true that the contractors had promised him a safe passage home, a fact that troubled both the judge (he called the circumstances of the arrest "unusual to say the least") and jurors. Noorzai was nonetheless convicted and sentenced to life in prison.

Noorzai will probably be the last foreign drug kingpin to accept a consulting gig in the U.S. Most 960a narcoterror stings now take place in their entirety overseas. DEA has staged them so that they conclude in a country with whom the U.S. has an extradition treaty and friendly relations. In 2007 DEA informers enticed noted Syrian arms trafficker [Monzer al-Kassar](#) and associate Luis Godoy to meet with them in Spain. Fooled into thinking that the snitches were FARC terrorists, Al-Kassar agreed to supply surface-to-air missiles, supposedly to shoot down American helicopters, as well as large quantities of grenades, assault rifles and military-grade explosives.

Al-Kassar, Godoy and an associate were extradited to the U.S., [indicted](#) on narcoterrorism charges and convicted. Al-Kassar got thirty years and Godoy twenty-five, in effect life sentences as both men were in their sixties.

It's hard to work up sympathy for drug and gun traffickers. Sometimes, though, lesser figures get trapped in the wake. [Tareq Mousa al-Ghazi](#), who was charged along with al-Kassar and Godoy, protested that all he did was introduce the informers to al-Kassar. "Here, the government itself created the associations, agreements and crimes that it has prosecuted," said al-Ghazi's lawyer. "Absent the D.E.A.'s involvement, nothing in the indictment would ever have happened." Obviously, [the Justice Department disagrees](#). "It's hard to imagine," said a prosecutor, "that it would shock the conscience for the government to proactively investigate those outside the country who they believe are ready and willing to harm Americans and to harm American interests."

So what happened to Victor Bout? In March 2008, at the end of an investigation that included clandestine meetings in the Netherlands Antilles, Denmark and Romania, [authorities in Thailand arrested the notorious arms trafficker](#) and an associate, Andrew Smulian, for offering to sell weapons to the FARC; actually, to DEA informers who were pretending to be members of FARC. Bout and Smulian were extradited to the U.S. in November 2010. Smulian pled guilty and is cooperating with authorities. Bout faces two indictments. One charges [a narcoterrorism conspiracy](#). A more recent indictment alleges that Bout and American co-conspirator Richard Chichakli [laundered money and violated international prohibitions](#) against funneling arms to Africa.

It's hard to work up much sympathy for these characters. Still, a pair of law review articles suggest that unless targets are carefully selected, 960a may allow U.S. authorities to cast too wide a net, snaring



foreigners whose conduct does not threaten U.S. interests (click [here](#) and [here](#).) Indeed, 960a is so loosely worded that a terror nexus could be established by simply getting a target to say they hate Americans, or by having informers pretend to be terrorists intent on destroying America.

That, claims Bout, is exactly his predicament. Now, thanks to the wonders of the Internet, you can read his side of things. Be sure you have plenty of hankies, then click [here](#) for his home page. Yes – the man has a website. And no, we're *not* kidding!

Posted 3/4/11

## A DANGEROUS LOSER

### *Did a Saudi student come to America with murder in his heart?*

*By Julius (Jay) Wachtel.* On February 24 FBI agents in Lubbock, Texas arrested [Ali-M Aldawsari](#) for attempting to use a weapon of mass destruction, a crime that could land him in prison for life. Described by an FBI agent as a “guy [who] apparently had the intent and knew how to go about it,” the twenty-year old college student from Saudi Arabia was reportedly a lone wolf who had been set on wreaking havoc on the Great Satan since his high school days.

Whether that’s true we’ll get to in a moment. But first let’s make it clear that this wasn’t another of the FBI’s [rope-a-dope](#) deals. No informer had enticed Aldawsari to prove his manly creds by doing Jihad. No FBI undercover agent had offered to provide the bomb and a vehicle in which to plant it. Indeed, had it not been for the intervention of an alert trucking company worker, a plot described as “the only [current] case of its type in terms of insider threat in this country” would likely still be in progress. (DHS claims that they had already alerted the FBI about suspicious bank transfers by Aldawsari, but such warnings are common.)

According to the [criminal complaint](#) and other sources, Aldawsari arrived in the U.S. in 2008 on a student visa. After studying English at Vanderbilt he enrolled at Texas Technical University in Lubbock with a major in chemical engineering. Academic problems apparently led to his premature departure in 2010, but he kept his visa in effect by transferring to a local two-year institution, South Plains College, where he studied business.

Aldawsari didn’t pop up on the FBI’s radar until January 2011, when he ordered phenol over the Internet from a North Carolina supplier. Among other things, phenol is one of the three ingredients of a powerful explosive, picric acid. Company policy was to ship phenol only to a commercial address, so Aldawsari asked that it be sent to a freight line terminal, where he would pick it up. (It turned out that he had previously received nitric acid, another component of picric acid, in this way.) This time, though, a freight line employee got suspicious and refused delivery. Not only that, he called the cops, who in turn alerted the FBI.

That’s when the real investigation began. At the FBI’s request, the chemical distributor called Aldawsari to ask why he wanted phenol. The youth said he was with Texas Tech and needed it for research. He later told an FBI agent posing as an employee that he wanted to develop an odorless cleaning fluid so that he could get into a bigger university. What he didn’t say was that he had already left TTU. Aldawsari subsequently canceled his order, telling the supplier that he had another source.

By mid-February 2011 the FBI knew a lot about Aldawsari. Aside from obtaining chemicals under pretext, he had started posting Jihadist rants on the Internet. FBI agents monitoring his e-mails under court order discovered that Aldawsari was researching possible terrorist targets, including dams and reservoirs. He had e-mailed himself highly detailed instructions for making picric acid and was buying items such as glass beakers, a soldering gun and even a Hazmat suit online. Agents who surreptitiously

searched his apartment found the suit as well as the shipping containers for nitric acid. More chillingly, they also found three gallons of concentrated sulfuric acid, the third component of picric acid.

And that wasn't all. Agents discovered a diary, written in Arabic, that laid out his scheme and purpose in considerable detail. It all began, he wrote, when he was a teen:

I excelled in my studies in high school in order to take advantage of an opportunity for a scholarship to America....And now, after mastering the English language, learning how to build explosives, and continuous planning to target the infidel Americans, it is time for Jihad.

Aldawsari set out a "synopsis of important steps." Among these were obtaining a forged U.S. birth certificate, applying for a passport, getting different driver licenses, traveling to New York, renting several cars, equipping each with a remotely-detonated bomb, strategically placing the vehicles during rush hour, and then finding a safe place from which to unleash his destruction.

In 2009 [Najibullah Zazi](#) and two friends hatched a plot to bomb New York City subways. But they didn't manage to produce any explosives before the Feds closed in. Last year [Faisal Shahzad](#) went them one better, actually crafting a makeshift bomb and planting it in a vehicle he parked at Times Square. Alas, the device fizzled out, as did Shahzad's attempt to flee the U.S. So now there's another lonely sadsack with chemicals, a Hazmat suit and a wildly ambitious to-do list. We say "lonely" because soon after landing in the U.S. Aldawsari [blogged that he was in love with an English tutor](#). "She is gorgeous that I can't forget her just right away... I am asking Allah the great to convert her to Islam and marry me."

If one can believe what Aldawsari posted during his first two years in the U.S., he appeared to be a fervent admirer of all things American; after all, what red-blooded boy wouldn't dream of working at Google? His radicalism didn't surface until he was leaving Texas Tech. Perhaps it was a failed academic career rather than any preconceived notions of Jihad that prompted what *The Tennessean* called Aldawari's "radical change in tone." Aldawsari wasn't here on his own dime but on a full scholarship from a Saudi industrial concern, so one can appreciate the embarrassment he must have suffered when it became necessary to explain to his family and sponsors that a prestigious degree was out of reach.

Aldawsari, Zazi and Shahzad don't look anything like committed terrorists, say, the 9/11 hijackers. Looking for fame, fortune and, perhaps, a buxom blond spouse they found themselves struggling in a competitive environment where only the fit prosper. It's hardly a stretch to think of them as ordinary losers who sought to polish their tattered self-image by turning to Islamic radicalism. Really, they're little different from the disaffected wannabes whom the Feds gave been roping in for years. Looking back in time, they're also not unlike those hate-filled domestic fanatics (Timothy McVeigh comes to mind) who railed against a system that was passing them by.

Aldawsari was clearly delusional – just look at his "synopsis." Whether or not he was capable of carrying through on his plot, though, three gallons of concentrated sulfuric acid can make anyone dangerous. So it's a good thing that he was stopped. We note with satisfaction that the FBI moved in quickly and used special terrorism statutes and investigative tools to excellent effect. [As we've pointed out](#), giving law enforcement expanded authority to intercept communications and conduct secret searches in cases of suspected terrorism doesn't threaten privacy – considering the far more intrusive alternatives, it can help *preserve* it.

Yet one glaring weakness remains. We're grateful that police were notified when Aldawsari tried to acquire a potentially dangerous chemical in an irregular way. But whether authorities should be alerted in such cases shouldn't be left to citizen discretion. After all, the other components *did* get through. Our lackadaisical approach towards regulating the distribution of hazardous substances has long been a serious problem. If we're really serious about preventing terrorism, here's hoping that this episode serves as a wake-up call.

Posted 12/14/10

## THEY DIDN'T READ POLICE ISSUES

### *Two more wannabe Jihadists accept bombs from the FBI*

*By Julius (Jay) Wachtel.* "The threat was very real. Our investigation shows that Mohamud was absolutely committed to carrying out an attack on a very grand scale." That's how [Oregon's top FBI agent](#) described the menace posed by Mohamed Osman Mohamud, 19, a naturalized citizen who was arrested for attempting to bomb a Portland Christmas-tree lighting ceremony on November 26.

A [criminal complaint](#) charged the Somali native with attempting to use a weapon of mass destruction, an offense that could land him in prison for life. According to the FBI it all began last year when Mohamud, who was eager to become a Jihadist, exchanged e-mails with a terrorist in Pakistan. That man referred Mohamud to someone else, but a mixup involving e-mail addresses kept Mohamud from making contact. Not to worry! In August 2010 the FBI, who had been monitoring the e-mails, had an undercover agent contact Mohamud and identify himself as a representative of the group he was trying to reach.

Mohamud bought the story line, hook and sinker. He couldn't fly (the FBI had placed him on the "no fly" list, preventing a trip to Alaska) so going overseas was out of reach. Happily, the informer offered Mohamud a range of options that he could exercise in the good old U.S.A., from praying five times a day to "becoming a martyr." Guess which one Mohamud chose.

A second undercover was brought in, and from that point on it was a piece of cake. To avoid later claims of entrapment they had Mohamud select the target (the Christmas tree lighting ceremony) and specify the means (a bomb). They even had him buy some of the components. Mohamud was clueless about explosives, so the FBI helpfully built a "bomb" and installed it in their van. To show Mohamud how to set it off they had him participate in a practice run where they remotely detonated a small device.

On the appointed day the FBI delivered the van. Mohamud looked at the bomb and called it "beautiful". He rode in the vehicle as an agent parked it near the location where the ceremony would take place. As celebrants gathered, Mohamud dialed the appropriate number.

Gotcha!

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Why do real terrorists need amateurs to help? Alas, that question apparently never crossed the mind of [Antonio Martinez](#), aka Muhammad Hussain. Only twelve days after Mohamud's arrest the 21-year old Maryland man tried to blow up a military recruitment office using a car bomb given to him by, you know, the FBI.

Described as "a recent convert to Islam" in the [criminal complaint](#), Martinez had told an FBI informer in October that he wished to attack the recruitment station. In subsequent meetings, many caught on tape, Martinez suggested approaches ranging from armed assault to propane bombs. He even suggested

forming an armed band that would stage "short, small attacks or ambushes, which is how the brothers in Chechnya...dominated." If POW's were captured he would "talk to them about accepting Islam, and ransom them for something what would benefit the mujahideen."

Martinez apparently tried to enlist others in his schemes but found no takers. One man whom Martinez described as a potential gun source said that it would take a long time to form a guerrilla army and to forget it. Unable to stir up followers, Martinez soon asked to meet the "Afghani Jihadist" (actually, an undercover FBI agent) that the informer had previously mentioned.

The informer happily obliged. During the meeting the FBI agent negotiated the strike down to a single car bomb, which he would provide. He repeatedly asked Martinez to affirm that attacking the recruiting station was his idea and that no one had talked him into it. Martinez helpfully insisted that the plan was his, and his alone.

Indeed, everything was going swimmingly when Muhamad's arrest hit the news. An "agitated" Martinez called the informer and said "that he needed to know who this brother [the agent] is...I'm not falling for no b.s." After a little bit of reassurance the plot was back on track and Martinez, who was definitely not intent on suicide, started talking passports and escape routes.

On December 7, one day before the planned attack, the FBI agent brought in the bomb-laden SUV and showed Martinez how to arm the device. He returned with the vehicle the next day. Martinez "armed" the bomb and parked the SUV at the recruiting station. The informer picked him up and they waited nearby. A call came in from the FBI man, confirming that soldiers were present in the center. Martinez tried to activate the device.

Gotcha!

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It's hard to work up sympathy for either Mohamud or Martinez (let's call them M & M for short.) They're clearly very sick puppies. Yet if the government's only goal was to protect the public, it was completely unnecessary to stage such elaborate ruses. M & M could have been arrested much earlier in the game for violating [18 USC 373](#), solicitation to commit a Federal crime. It's a serious offense, carrying a penalty of one-half the solicited crime or twenty years if the maximum is life.

M & M are the latest in a string of terrorist wannabes to accept bombs from the FBI. As we discussed in [Taking Bombs From Strangers](#), neither can expect any relief from the entrapment doctrine, as their extensive yakking about killing and Jihad would surely convince a judge and jury that they were predisposed. Stung by past criticism, the FBI took special care to demonstrate that M & M weren't roped in. Mohamud could have chosen prayer. But he didn't. Martinez didn't have to say it was all his idea. But he did.

Why were these cases taken to such extreme ends? Several reasons come to mind. Pretend bombings make a big splash, giving the FBI and the U.S. Attorney a lot of favorable publicity. These really big shows, with really big ends, help justify the government's phenomenally expensive counterterrorism program (at last count, involving one out of three FBI agents) and prove that taxpayer money is being well spent.

Internally, rope-a-dopes are good for morale. FBI agents assigned to traditional crimes like fraud and bank robbery actually get to arrest people and go to trial. That's far more satisfying than the countless hours of surveillance and innumerable dead ends that confront the poor souls assigned to terrorism squads. Getting a dope to plant a bomb must be a welcome relief. For agents and attorneys who run such cases it's a great career booster as well.

Of course, there are downsides. Rope-a-dope cases create the illusion that we're really doing something about terrorism. After all, leaving aside the [Times Square](#) fiasco (well, the bomb *did* fizzle out) the FBI has apparently prevented one-hundred percent of all planned attacks! Worse, when agents deposit fake bombs at synagogues ([The Men Who Talked Too Much](#)), public places and military recruiting stations, they may be planting ideas in some very unstable minds. Now that their celebration has been validated as a terrorist target, citizens who intend to attend Portland's 2011 tree-lighting ceremony will have something new to worry about.

At least one thing's for sure. It won't be Martinez.

Posted 11/1/10

## TAKING BOMBS FROM STRANGERS

### *How far should the Government go in fighting terrorism?*

*By Julius (Jay) Wachtel.* Just when those nasty Jihadists thought it was safe to emerge from the shadows, another loudmouth fell prey to a terrorist sting. On October 27 FBI agents arrested [Farooque Ahmed](#), 34, a naturalized citizen of Pakistani descent for plotting to bomb commuter rail stations in Virginia. But not to worry! Just like in the case of the "[Men Who Talked Too Much](#)," public safety was never at risk. Ahmed's "conspirators" were Government agents.

Flash back to the 1970's and 80's when police departments used Federal grants to fund sting operations against fences and thieves. Your blogger, then with ATF, worked undercover on two such projects in the Phoenix area. (His observations formed the basis of a Master's thesis. For the abstract click [here](#).) Posing as someone looking to buy stolen goods, he learned that it was ridiculously easy to get people to bring in loot. Most turned out to be opportunists looking for a fast buck. Their enthusiasm quickly depleted the budget and led to the worry that sooner or later a citizen would get hurt. How greedy were they? One small-time thief asked your blogger if he needed a front-end loader. When told "yes" he hot-wired the nearest one handy and drove it across town. (Patrol officers intercepted him enroute.)

It's not just sting operations. Undercover work that isn't tightly controlled can cause crimes to happen that would not have otherwise occurred. In a [journal article](#) inspired by his experiences your blogger identified two characteristics that seem especially pertinent.

		Opportunity Structure	
		Authentic	Unauthentic
Targeting	Focused	1	2
	Diffused	3	4

"Targeting" means how suspects are selected. It ranges from focused, where a known offender is approached, to diffused, where officers transact business with anyone whom they manage to lure.

"Opportunity structure" denotes the settings and inducements. It ranges from authentic, where transactions are realistically staged, to unauthentic, where they are not.

For example, if an undercover officer buys drugs from a known drug dealer (focused targeting) and pays the going price (authentic opportunity structure) the transaction falls in cell number 1. If too much money is offered or the seller is asked to deliver larger quantities of drugs than they normally deal (unauthentic opportunity structure) the transaction falls in cell number 2.



Focused targeting is far less likely to lure opportunists and create surplus crime. If focused targeting is impossible – for example, when mounting a sting against car burglars – opportunity structures should be as authentic as possible. Leaving a purse in a locked car (cell number 3) is a far better practice than in one with the windows rolled down (cell number 4).

Post-9/11 domestic terrorism cases tend to lack in one or both dimensions. In the [Liberty City/Sears Tower plot](#) of 2006, an FBI informer encouraged members of a bizarre Miami religious sect to make plans to bomb the famous Chicago landmark. That case went through two mistrials before convictions were returned. It was followed by the 2007 arrest of the [Fort Dix Six](#), another group that was talked into a terrorist frenzy by an FBI informer.

Criticisms that only wannabes were being snared led the FBI to start giving targets make-believe bombs to plant. That strategy figured in three cases last year.

- In May 2009 [four ex-cons](#) were arrested for placing a “bomb” in a car parked at a Jewish synagogue. They were convicted last week despite serious reservations by the judge and jury about the informer’s conduct. (For more see the [post](#) below.)
- In September 2009 the FBI arrested [Hossam Smadi](#), 19, a Jordanian national who overstayed his visa. Smadi had parked a supposedly bomb-laden FBI car in an underground garage of a Texas office tower.
- Also in September 2009 the FBI arrested [Michael Finton](#), 29, an embittered ex-con with dreams of Jihad. He parked his FBI-furnished vehicle across the street from an Illinois Federal courthouse. It too had a “bomb.”

Last week we wrote about the entrapment defense. This time we’re taking a different approach. Whether or not the government can legally entice persons to commit crimes, should it? Consider the two dimensions, targeting and opportunity structure, mentioned above.

- As to targeting, should agents or informers keep going to mosques or other places where Muslims gather until someone bites?
- As to opportunity structure, should agents or informers supply targets with everything they need, from the motivation to proceed, to the knowledge to do so, to the implements (i.e. the bombs) themselves?

Unlike Times Square Bomber [Najibullah Zazi](#), who acted on his own initiative, the dupes mentioned above lacked the independent capacity to bomb anyone. They also frequently wavered after things were set. By then, of course, a lot of effort and money had already been spent, and it was very much in the agents’ self-interest that the investigations not come apart.

We only know about the characters whom the FBI stumbled across that agreed to do Jihad. Having done a bit of police work himself, your blogger is convinced there are likely thousands of candidates. Fortunately, bizarre law enforcement practices tend to have a limited life-cycle. Police sting operations

[www.policeissues.com](http://www.policeissues.com)

became less productive as word spread that cops were buying loot. It's inevitable that amateur Jihadists will in time stop accepting bombs from strangers.

As for those we really should worry about, rest assured they never would.

Posted 10/25/10

## THE MEN WHO TALKED TOO MUCH

*For those in the Federal bulls-eye the entrapment defense offers little refuge*

*By Julius (Jay) Wachtel.* In June 2008 two men met outside a New York mosque in Newburgh, New York. One, [James Cromitie](#), was a 46-year old parolee who had served twelve years for selling dope. The other, [Shahed Hussain](#), was an ex-con on probation for identity theft. He was also a highly experienced FBI informer. Under the guise of being a wealthy recruiter for Pakistani Jihadists, Hussain [had been chatting up members of the mosque](#) for a year.

Hussain's persistence – he went so far as to offer one member money “to join the team” – led the imam and others to suspect that he was a snitch. But Cromitie, who infrequently attended services and had never met Hussein, bought his story hook, line and sinker. One month later, at a second meeting, Cromitie said that yes, he wanted to do Jihad, and by all means sign me up. With Hussain's encouragement [he recruited three others](#), each a Muslim convert. Two, Onta Williams, 34 and David Williams IV, 29, were, like Cromitie, convicted drug dealers. The third, Laguerre Payen, 29, a Haitian national, was on parole for felony assault. He was reportedly on medication for psychological problems whose symptoms included “talking in circles.”

From that point on it was a piece of first class theater. Hussain had the men regularly meet at a home that the FBI had wired for audio and video. His prodding included offers of thousands of dollars in rewards. [Cromitie became a particularly voluble participant](#):

I just want to do one big example. That way I can sit home and go, yeah, I did that. And I'm getting me a Purple Heart for that, and Mr. President, I mean, he gave...Purple Hearts for killing a whole family for no reason. So give me a Purple Heart for that, Mr. President....

As time passed the men hatched plans to blow up synagogues in the Bronx and down military cargo planes with Stinger missiles. Hussein, the informer, said he would furnish the explosives. But talk is cheap and the Government wanted more. After helping the four dupes case and photograph the principal objectives, including the Riverdale Jewish Center in the Bronx, [Hussain drove them to a warehouse](#) where they examined (inert) bombs and a (dud) Stinger missile and tested a remote-controlled detonator. (All these items had been carefully prepared by the FBI.) Satisfied, they transferred the goodies to a nearby storage container and went out to celebrate. Everything was set.

On Wednesday evening, May 20, 2009, not quite one year after Hussain and Cromitie first met, [the four would-be terrorists planted bombs](#) in two cars they had pre-positioned outside the Jewish center. Their plan was to activate the bombs by remote control while simultaneously shooting down aircraft at a nearby military base. But as they tried to drive off an NYPD semi blocked their way. Then SWAT swooped in and that was that.

In 1969 a Federal narcotics agent met with three men who had been making large batches of meth but had run out of a necessary chemical. Pretending to be a buyer, the agent furnished the ingredient, then

arrested the suspects for making and selling meth. Their conviction was reversed by the Ninth Circuit, which found that the Government had participated to an "intolerable" degree. But the Supreme Court disagreed. In [U.S. v. Russell](#) it held that, given predisposition, simply providing the opportunity to commit a crime is not entrapment.

It [does not] seem particularly desirable for the law to grant complete immunity from prosecution to one who himself planned to commit a crime, and then committed it, simply because Government undercover agents subjected him to inducements which might have seduced a hypothetical individual who was not so predisposed.

Entrapment is a matter of law and of fact. In the Newburgh case, [defense lawyers](#) argued during pre-trial motions that the scenario had been a work of make-believe, and that their clients "lacked the capability to commit the crime before the government came along." Indeed, the Government readily [conceded that the plot was "aspirational,"](#) meaning that the defendants had no independent access to explosives and that at each step their activities were fully under control, as the interests of public safety would naturally require.

The judge declined to dismiss the case. [Her decision](#) nonetheless reflected deep skepticism about the Government's role in instigating a crime:

Did the government become aware of potential criminal activity and take action to neutralize a real terrorist threat or did it locate some disaffected individuals, manufacture a phony terrorist plot that the individuals could never have dreamed up or carried out on their own, and then wrongfully induce them to participate in it?

That left entrapment for jurors to decide. Here is a [standard Federal jury instruction on entrapment](#). (See pp. 84-85. Note that these are from the 7th. Circuit as we could not find the equivalent 2nd. Circuit instructions online.)

The government must prove beyond a reasonable doubt that the defendant was not entrapped. Thus, the government must prove beyond a reasonable doubt either (1) that, before contact with law enforcement, the defendant was ready and willing or had a predisposition [emphasis added] or prior intent to commit the offense, or (2) that the defendant was not induced or persuaded to commit the offense by law enforcement officers or their agents...

The instruction goes on to set out factors that may be considered. It ends with this reminder: "While no single factor necessarily indicates by itself that a defendant was or was not entrapped, the central question is whether the defendant showed reluctance to engage in criminal activity that was overcome by inducement or persuasion."

[According to a professor](#) at an NYU security think-tank, claims of entrapment have failed to derail any of the more than thirty post-9/11 terrorism prosecutions that involved informers. It didn't work in the [Albany "pizza sting,"](#) where Hussain (yes, the same snitch as in this case) induced two Muslim men to set up a money-laundering operation that would purportedly transmit cash to terrorists. And it didn't work in the Newburgh case. In the end the planting of devices and the defendants' violent rants, all helpfully

caught on tape, persuaded both the judge and jury that however much the accused had been led by the hand they were indeed "predisposed." [Each was found guilty on multiple counts](#) and faces a life sentence.

We may not have heard the last word. It's possible that a legal line was crossed, and we're eager to see what comes from the appeals that are certain to be filed. But there's more than just the law. Newburgh and other terrorism cases have raised issues that go to the heart of the proper role of the police in society. We'll examine some relevant concerns next week.

Posted 5/3/09

## TORTURE: WHO DECIDES?

*The real dilemma's not about using torture -- it's about authorizing it*



[Click here to link to video](#)

By Julius (Jay) Wachtel. Where did “enhanced interrogation” techniques come from? No, they’re not an outgrowth of the [3D experiments](#) (“debility-dependence-dread state”) that the C.I.A. commissioned during the Cold War. Neither did they originate with [SERE](#), the program that prepares special ops troops for those nasty “we have ways to make you talk” methods that made North Korean interrogators famous. Nope, for the *real* scoop we must turn to...Hollywood!

A vicious criminal buried a comely teen alive and abandoned her to suffocate. After the requisite number of chases and shootouts Inspector Callahan caught up with the kidnapper. There was no time to argue. *Where is she?*

While “[Dirty Harry](#)” has its comic-strip moments much of it rings true. Its depiction of the kidnapping seems nearly prophetic. In 2002 real [German police](#) arrested the abductor of an 11-year old boy when he tried to pick up the ransom. But the man stubbornly refused to help officers find the child. After hours of fruitless questioning Frankfurt’s deputy police chief bluntly warned him that if he didn’t cooperate a “specialist” would be summoned to inflict unbearable pain. Although the ruse worked, it failed to save the victim: his body was found in a lake, swathed in plastic.

Scorpio’s victim also turned up dead. But unlike the German cop, who was relieved of duty and investigated for merely threatening torture, Inspector Callahan, who really did it (on screen) got off scot-free. Well, there *were* sequels to be filmed!

Dirty Harry's actions stirred spirited debate in the halls of academe. In his classic essay "[The Dirty Harry Problem](#)," criminologist Carl Klockars used what the Inspector did to explore the means-end dilemmas that real cops encounter. But long before the movie hit theaters a string of Supreme Court decisions had already made it clear that anything remotely smacking of torture would make whatever the police got inadmissible in court:

- [Rochin v. California](#) (1953): Officers choked a suspect who was swallowing pills, and when they couldn't get him to stop had his stomach pumped out. (In this landmark case the Court ruled that police behavior which "shocks the conscience" violates the [Due Process clause](#) of the Fourteenth Amendment.)
- [Leyra v. Denno](#) (1954): During a relentless interrogation a psychiatrist posing as an ordinary physician told the defendant, who was suffering from a severe sinus condition, how much better he would feel if he confessed.
- [Spano v. New York](#) (1959): The defendant confessed after a friend (a police cadet) begged him, saying that if he didn't the cadet would get in trouble and his wife and kids would suffer.
- [Rogers v. Richmond](#) (1961): After a prolonged, fruitless interrogation officers threatened to arrest a suspect's sick wife
- [Frazier v. Cupp](#) (1969). Officers subjected a defendant to a grueling 36-hour interrogation.

Next thing we knew there was [Abu Ghraib](#). Shocked by disclosures that "unlawful combatants" were being starved, deprived of sleep, forced to stand in stress positions for hours, and so forth, attorney [Alan Dershowitz](#) wrote that it was time to give the whole matter of torture a proper airing. A year later Dershowitz wrote a [follow-up article](#) suggesting that requiring interrogators to justify the necessity for "rough interrogation" techniques by securing special warrants could help assure that unsavory methods were used only when really, really necessary.

As Dershowitz is a well-known civil libertarian, his piece set off a ruckus. In "Torture: the Case for Dirty Harry and Against Alan Dershowitz" philosopher [Uwe Steinhoff](#) lauded Inspector Callahan's instincts:

The Dirty Harry case, it seems to me, is a case of morally justified torture. But isn't the kidnapper right? Does not even he have rights? Yes, he has, but in these circumstances he does not have the right not to be tortured. Again, the situation

is analogous to self-defence. The aggressor does not lose all of his rights, but his right to life weighs less than the innocent defender's right to life...Harry made the right decision.

Steinhoff nonetheless warned against officially endorsing torture, reasoning that giving it legitimacy would amplify its use and coarsen the system. Agreeing with Klockars, he suggested that the best way to keep repugnant yet potentially lifesaving practices within bounds was to place would-be torturers on notice that they could be prosecuted. His moral calculus brings to mind a 1999 ruling by the [Israeli Supreme Court](#) (cited by Dershowitz) that outlawed all forms of torture but left it up to judges to forgive interrogators who thought they had no option.

In a [rejoinder](#) Dershowitz pointed out that Bill Clinton had supported using Presidential findings to authorize torture should extreme situations warrant. What neither the lawyer nor the ex-President knew was that Justice Department attorneys crafted secret guidelines so permissive that two Al Qaeda suspects wound up getting waterboarded [a total of 266 times](#). Just as Klockars and Steinhoff feared, trying to regulate "enhanced interrogation techniques" only managed to grease an already slippery moral slope.

History tells us that crusades (think War on Terror) have led otherwise good people to endorse and engage in the most brutal and despicable behavior. Remember the [Milgram experiment](#)? It's not surprising that when our new President realized what was happening under the Stars and Stripes he would adopt the Klockars/Steinhoff approach and ban torture altogether. It may not be a perfect solution. But in this world it's as close to perfection as we're likely to get.



Posted 5/24/09

## ROPE-A-DOPE

*Now that five “Liberty City” plotters stand convicted, should we feel safer?*



By Julius (Jay) Wachtel. “This wasn't so much a case of the FBI interrupting an ongoing terror plot, but of the agency providing a blueprint for it.” So said the editorial board of the [Miami Herald](#).

“We identified and disrupted a terrorist threat, and as a result our community and nation are a much safer place.” So said [Jonathan Solomon](#), special agent in charge of the FBI office in Miami.

Which account is the more accurate? Two weeks after five Liberty City (Miami) residents were convicted of plotting to bomb the Miami FBI office and the Chicago Sears Tower, the truth remains elusive. With trials in November 2007 and April 2008 ending in hung juries (one defendant was acquitted at the end of the first trial, another at the most recent) things seem a lot less certain than three years ago, when [Attorney General Alberto Gonzales](#) announced the dismantling of a home-grown terrorist cell that intended to wage a “full ground war against the United States.”

It all began when a snitch told the FBI that the head of a tiny Muslim sect in the impoverished “Liberty City” area of Miami was ranting against the Government. During the next few months the original stoolie and a second informer posing as an Al Qaeda representative encouraged Narseal Batiste and his followers to talk trash about the U.S.

As the [indictment](#) attests, Batiste, who once lived in Chicago, was recorded saying that he wanted to blow up the city’s famed landmark, the 108-floor Sears Tower. In another taped event an informer led Batiste and his motley crew (the indictment referred to them as “soldiers”) in pledging allegiance to Al Qaeda, a ritual that was offered to jurors as proof positive of the cabal’s dastardly intentions. Prompted for a

wish list, Batiste requested radios, guns, boots, weapons, a camera and \$50,000 cash (he got boots and the camera.) He and an underling then drove around Miami in a van rented by the FBI and photographed Federal offices they supposedly intended to bomb.

Batiste would later testify that he only cased the buildings to collect the 50 G's. Whatever his intentions, taking the pictures was the overt act that agents and prosecutors had been waiting for. On June 22, 2006 Batiste and six followers (the indictment ominously called them "soldiers") were arrested for conspiracy to provide material support to a foreign terrorist organization and to destroy buildings with explosives, charges that could bring terms of as much as fifty years.

That's when a funny thing happened. During a press conference [Assistant FBI Director John Pistole](#) let slip that the plot was "more aspirational than operational." His candid comment, which probably caused much heartburn at the Hoover building, reflected the undeniable fact that the case against the men was awfully thin. No evidence of any kind -- neither weapons, terrorist plans nor bomb manuals -- was recovered from the forlorn warehouse that served as the alleged terrorist lair. What there was lots and lots of chatter, much of it prompted by informers who were reportedly paid more than \$100,000 to help bring the motley group within reach of the law.

#### [MSNBC Video Report on Arrests](#)



Considering all that it's no surprise that juries revolted twice. [Jeffrey Agron](#), a lawyer and foreman at the first trial said that jurors felt the first informant lacked credibility, and that the second led the defendants on. "It's a case where a government informant got a bunch of guys together to swear a loyalty oath to Al Qaeda," he said. "It's a B movie really, more than a criminal case."

Yet like everyone in Hollywood knows, given a large enough ad budget even a lousy movie can succeed. After taking "[three bites of the apple](#)" and spending millions the Feds finally managed to tailor a case that stuck. Or mostly stuck. A third mistrial

was avoided when the judge expelled a juror whom the others accused of refusing to deliberate. Whether she was uncooperative or a victim of bullying will surely come up on appeal.

Domestic Jihad, virtually unknown before 9/11, has become a growth industry. Fortunately, our homegrown terrorists seem to lack the leadership skills, ideas and physical and material means to act on their own. With always an informer to track the shenanigans, remarkably not a single plot has slipped through to completion. In the most recent example, which occurred only days ago in the Bronx, [four ex-cons got caught](#) planting what they thought were real bombs at two synagogues. They reportedly got the devices (and one supposes, the notion) from [Shahed Hussain](#), an experienced FBI informer. Until the rumble in the Bronx the smooth-talking ex-con's claim to fame was the [Albany, New York "pizza shop" sting](#) of 2004, where he got two Muslim men targeted by the FBI to help him in a bizarre, wholly made-up money laundering scheme that defense lawyers fruitlessly challenged as an outrageous example of entrapment.

It's hard to feel sorry for those who harbor radical fantasies. Still, as the writer well knows, there's a big difference between infiltrating an active criminal organization and trolling for naive opportunists. Many believe that the collapse of the Twin Towers led to a like collapse in the values and precepts that make the American system of justice special. Of course, we *should* worry when the government acts as a provocateur. And it's not only a moral concern. As we've pointed out in earlier posts manipulating dopes and staging show trials promotes an illusion of safety while distracting agencies from doing the hard work that's necessary to uncover real threats.

Where the Feds once led the charge for higher standards, it seems that they're now leading the race to the cellar. It's not the *terrorists'* character that we ought to be worrying about.

Posted 12/15/07

## MAKING TERRORISTS (PART II) -- CHANGE THE LAW!

### *Relaxing the standards for electronic interceptions can be a good idea*

*By Julius (Jay) Wachtel.* The word on the Sears Tower “terrorist conspiracy” is in, and it’s not good for the Government. One defendant was acquitted outright and the jury hung on the others (reportedly an even split). As many predicted, the FBI’s active promotion of the crime left a few fact-finders cold. If an informer has to intercede *that* forcefully to get someone to step over the line, where was the threat in the first place?

That’s what we questioned when the trial began. That the FBI persists in making questionable cases like the Sears Tower plot isn’t surprising. As a law enforcement agency they are driven by arrests and convictions. If making quality cases is tough, what gets done is numbers. That’s one reason why ferreting out terrorists should be left to intelligence agencies, who are held to completely different standards.

But we digress. Regardless of who does what, evidence must come from *somewhere*. Police are normally mobilized by victims, witnesses and physical evidence. In consensual crimes such as vice and narcotics victims and witnesses are unavailable, so we turn to informers, surveillance and undercover work. Police can participate in illegal transactions and collect evidence until they have a strong enough case to satisfy even the pickiest prosecutor.

Terrorism presents special challenges. Obviously, we must intercede before the crime is completed. But “real” terrorists are far less vulnerable to undercover infiltration than ordinary criminals. How else can we mobilize? One approach is to intercept wire and wireless communications. However, unlike informers, who require no judicial blessing, tapping requires that police convince a judge there is probable cause a serious crime is being planned or committed. “Probable cause” means more likely than not, a standard that’s tough to meet when bad guys are so secretive that conventional methods don’t work.

What’s the fix? Lower the standard. Yes, there *is* precedent. Consider the Supreme Court’s *Terry* doctrine, which allows police to temporarily detain persons for investigation when there is “reasonable suspicion” that a crime is being planned or has occurred. Police use this authority frequently; for example, to detain someone in the vicinity of a crime who resembles the suspect’s description. It could be possible to

adopt a like standard, allowing police to intercept and “detain” communications given reasonable suspicion that at least one of the parties is promoting terrorism, under court supervision and within set time limits. If probable cause is reached then cases could proceed along a conventional track. (Incidentally, the “investigating magistrate” model is how some European countries inject the judicial system at the early stage of the evidence-gathering process.)

If we’re happy to live under the illusion that our criminal justice system is doing just fine, and we’re comfortable with staging show trials and using informers as agents provocateurs, then no change is necessary. Any approach, no matter how flawed, is certain of success until we’re hit again.

Posted 4/4/10

## IS THIS WHAT THE FRAMERS INTENDED?

*Economic woes and inflammatory rhetoric feed a resurgence of extremism*



By Julius (Jay) Wachtel. With the [arrest of nine top members](#), including “Captain” David Brian Stone and his son, David Stone Jr. on Federal charges ranging from seditious conspiracy to attempted use of weapons of mass destruction, Michigan’s obscure “Hutaree” militia finally got its fifteen minutes of fame. According to the indictment, the group intended to kill a local cop, attack his funeral procession with home-made bombs, retreat to defensive positions ringed with booby-traps, and then lead the popular uprising that was certain to follow.

Was the latest camouflaged band to emerge from America’s underbelly of conspiracy loonies, gun fanatics and all-purpose hate-mongers a serious threat? Or is it mostly a gaggle of poseurs? At present that’s hard to know, yet they apparently fell to the oldest trick in the Fed playbook: [an undercover agent](#). And not just any agent, but one who forged such an intimate relationship with papa and boy Stone that he attended both their weddings.

After spending months training with the Hutarees, secretly recording many hours of incriminating conversation, the mole learned of a chilling plan. It seems that instructions for a “covert reconnaissance exercise” scheduled in April [included the suggestion](#) that “anyone who happened on the exercise who did not acquiesce to Hutaree demands could be killed.” Before that could happen – possibly, before they had all the evidence they sought – the Feds swooped in. Game over.

Although acting as the vanguard of a mass uprising sounds like something straight out of the Commie playbook, Hutarees are hardly lefties. [Inspired by prophecies of an anti-Christ](#), they’ve apparently concluded that their mortal foe is already here, in the form of the Federal Government and all its helpers down to the cop on the beat.

Racist, government-hating, conspiracy-obsessed organizations tend to bubble to the surface during hard times. Based in the industrial belt state of Michigan, the Hutaree drew its members from a region where even poorly-educated persons who were willing to work enjoyed ready entrée into the middle class. No more. Ravaged by market forces and globalization, it's an area that now suffers from the highest unemployment in the U.S.

Still, most people adjust to adversity and move on. But there's no denying the attractiveness of [nativist](#), religiously-tinged philosophies that blame everything on immigrants and minorities. Special contempt is reserved for government bureaucrats who distribute benefits to the ungrateful while leaving the worthy to fight over crumbs. Well, the majority is no longer silent. And what it says is this: those who support the failed system aren't just wrong – they're traitors, in cahoots with a socialistic “New World Order” (some claim, under the aegis of the U.N.) that seeks to enslave God-fearing citizens, and that [only by taking up arms](#) can their threat be forestalled.

Whatever the precise ideology – and it's a jumble of contradictions, with Christianity uttered in one breath and assassination in the next – militias like the Hutaree give angry men an opportunity to assuage their hopelessness, vent their frustration and gain power and status, and all in the time-honored tradition of taking up arms to fight their oppressors.

Of course, there have always been extremists and hate groups. There's also been no shortage of individual fanatics. But when the horrific events of September 2001 brought the country together, shifting the focus to external threats, bitter memories of [Ruby Ridge](#) and [Waco](#) were set aside. Militias virtually disappeared from sight.

Alas, domestic tranquility was not to be. Less than a decade later, with the economy tanking and the U.S. embroiled in wars on two fronts [the country again veered left](#), going so far as to elect a black President. Pundits on the right were overjoyed: step aside, bin Laden – here was a new object of scorn! Chatter about socialist conspiracies returned to center stage.

Danger signals soon appeared. Some were in the form of physical threats to the President, none thankfully carried out. Emboldened, perhaps, by intemperate anti-government rhetoric that drove discourse to new lows, some crazies did go over the brink. In July 2008 [an unemployed 58-year old mechanic](#) walked into a Tennessee church, pulled out a sawed-off shotgun and blasted away, killing two parishioners and wounding six. In a rambling manifesto mailed to a local newspaper he railed against the “liberalism that's destroying America” and vowed to kill Democrats “‘til the cops kill me.”

In November 2008 [the NRA issued a breathless warning](#) that the new President was planning “to ban guns and drive law-abiding firearm manufacturers and dealers out of business.” Gun sales shot through the roof. [Five months later](#) three Pittsburgh police officers lay dead and a fourth was seriously wounded when a jobless 22-year old conspiracy theorist opened fire. A fan of extremist websites, the gunman had told a buddy that he feared Obama was about to take away their guns. “We recently discovered that 30 states had declared sovereignty,” the friend later said. “One of his concerns was why were these major events in America not being reported to the public.”

According to the [Southern Poverty Law Center](#) armed militias are on a roll, with an astonishing 363 forming only last year. Their resurgence comes as no surprise. When men openly wearing guns shadow Presidential visits; when [a group](#) ostensibly comprised of current and retired cops and soldiers declares that its members will refuse to confiscate guns or retake any State that withdraws from the Union; and when citizens billing themselves as “[Guardians of the Free Republics](#)” [order Governors to step down](#), it’s clear that a strange malady has taken hold of the body politic. Odd ducks who would otherwise be candidates for the funny farm make bizarre, slanderous pronouncements, and instead of parsing their rantings for evidence of mental illness we’re putting them on the airwaves and treating them as sages.

Just like in the sixties and seventies, when crazed lefties ran around with guns and bombs, extremism has torn the social fabric, encouraging marginal characters to follow their worst instincts. Restrained by the same freedoms that enable the provocateurs, there’s little that police can do. Perhaps some distraction will come up and the wackos will return to their caves before the ship of State founders.

Anger and intolerance are besetting the Republic. Armed bands that have nothing in common with the “well-regulated militias” of the Constitution traipse through the woods of the South and Midwest. No, it’s not what the framers intended, but until the gap between rich and poor narrows and civility comes back into fashion the law of the gun threatens to become the new American way.



## **IF YOU CAN'T FIND A TERRORIST, MAKE ONE!**

### *Encouraging Jihadist wannabees is the wrong approach*

*By Julius (Jay) Wachtel.* One would think that the least likely person to downplay a terrorist threat would be an FBI executive. But that is exactly what Assistant FBI Director John Pistole did last year when he said that a plot to blow up Chicago's Sears Tower offices was "more aspirational than operational." Be that as it may, seven members of a bizarre Miami religious sect are finally getting their day in court, charged with conspiring to wage holy war against the U.S. The terrifying scheme did not come to light from an independent investigation but through a tip from a man whom the FBI later enlisted as an informer. For getting the motley crew to talk up a storm, drive around in a car (rented by the FBI) and take pictures (with a camera supplied by the FBI), thus fulfilling the "overt act" requirements for a conspiracy, he and another paid source reportedly walked away with more than \$100,000.

Does that sound familiar? Perhaps you're thinking of this May's arrest of six Muslims from New Jersey and Philadelphia for allegedly conspiring to assault -- yes, Fort Dix! Again, the driving force was an FBI informer who spent months prodding the group to do something, anything besides talk about Jihad. When the dupes finally agreed to his offer to supply free machineguns (rocket-propelled grenades scared them) the FBI must have breathed a sigh of relief. Conspiracy to acquire illegal weapons -- finally, a violation! Lock 'em up!

And let's not forget that sting in Lodi where the FBI paid an informer more than a quarter million dollars to do everything short of driving a hapless young Muslim man to a terrorist training camp.

One must wonder...are these guys all there is?

Before international terrorism was the number one concern there was the domestic kind. During the days of the Montana Freeman and Timothy McVeigh, an undercover agent with enough weapons could have traveled the Coast-to-Coast right-wing circuit, stopping for coffee-and-ammo breaks at gun shows along the way, and made enough "conspiracy to acquire machinegun" cases to justify the salaries of every ATF agent for the next fifty years. Twenty-plus years of Federal law enforcement taught me that this great land of ours has enough disaffected bozos, and groups of bozos, to fill every prison many times over. All one needs do is get them worked up over the gripe du jour (taxes, immigration, gun control, white angst, or what-have-you), give them an opportunity and, snap! Another notch for the monthly statistical report.

We could do just that. If we're careful to cross the t's and dot the i's, we might even get convictions. But as I like to ask my criminal justice students: Is this what we ought to be doing?

Considering how many angry, armed men there are (and a few women, I suppose) it seems a miracle that our country isn't a smoldering wreck. Fortunately, that very same aspect of human nature that occasionally kills us even more frequently saves the day. It's easy to blow one's stack, but committing mass murder is something else again. Incidents like the Oklahoma City bombing and the Virginia Tech massacre don't take place very often, and not because of law enforcement. These horrifying events are rare because those so inclined get distracted. Some get sane. Others lose courage, fall in love, fall out of hate, wind up in a mental hospital, get run over by a truck, take up jogging. Even the simplest barriers -- a gun purchase records check -- can be enough to discourage or frighten into sanity all but the extraordinarily committed. And for those there is always SWAT.

But wait a minute -- normal people don't talk about waging terrorism, not even when prodded. Can we afford to ignore anyone who might even remotely pose a threat? A better question is: given the menace, can we afford to expend valuable resources on risks so tenuous that one must push targets over the line? There are likely hundreds of serious home-grown plots brewing every day. We don't know about them because most terrorists are presumably smart enough to avoid being talked into accepting boots from strangers (like the Sears Tower Six) or having Circuit City transfer terrorist training videos to DVD (like the Fort Dix Six.)

What should be done? First, use common sense. Even if we can ultimately secure convictions, encouraging crime gobbles up scarce resources, distracting us from the real task at hand and creating a dangerous illusion of effectiveness.

Second, apply existing sanctions. Three of the Fort Dix Six are reportedly illegal aliens. Unless there are truly compelling reasons to do otherwise, I suggest that when the FBI runs across deportable persons with favorable attitudes about terrorism they kick them out of the country.

Finally, look for system-wide solutions. Unlike other advanced nations, the U.S. insists on commingling criminal investigation and counter-terrorism, forcing the FBI to wear two hats. Rewards usually flow from producing measurable outcomes such as arrests and convictions. But serious intelligence work cannot be evaluated with numbers; indeed, such pressures can easily distort what actually takes place. We desperately need a separate intelligence agency that offers a distinct career track for counter-terrorism professionals. Unfortunately, the FBI, backed by its many friends in Congress, steadfastly refuses to yield any jurisdiction, offering feeble justifications for

what is fundamentally a reluctance to lose a chunk of its empire. That too needs to change.

Posted 5/9/10

## FLYING UNDER THE RADAR

*Can terrorists be caught before they act?*



By Julius (Jay) Wachtel. [Fifty-three hours](#) and, to be precise, twenty minutes after a would-be terrorist dropped off a smoldering, bomb-laden SUV at Times Square, Federal agents were escorting him off a commercial flight that was about to depart for Dubai. Given that [Faisal Shahzad](#) bought the vehicle off an Internet ad, for cash and without completing any paperwork, and that the seller couldn't as much as remember his name, the quick arrest seemed a remarkable piece of detective work.

Actually, the person who helped the most in catching Shazhad was another inept bomber, [Umar Abdulmutallab](#), who tried to blow himself up on Christmas day on a flight from Amsterdam to Detroit. You see, right after that incident [the Feds decreed](#) that everyone entering the U.S. from one of a specified list of countries – including Pakistan, where Shazhad recently spent five months – had to be rigorously screened. When he returned in February, Shazhad got caught up in these checks, and during the process gave inspectors the number of his prepaid, anonymous cell phone. They entered that information into a database.

Two months later, agents desperately trying to identify the SUV bomber punched in the phone number that the vehicle's buyer gave to the seller. Bingo – Shazhad was a mystery no more!

Agents quickly determined that Shazhad lived in a Bridgeport, Connecticut apartment complex. They arrived just in time [to watch their quarry pull up](#) in a vehicle registered under his name. But as a surveillance was organized he somehow managed to slip away. At JFK airport Shazhad paid cash for a one-way ticket and boarded the aircraft. He would have been long gone, too, had [government analysts](#) at

a data center not noticed his name on the final passenger manifest filed by Emirates Airlines as a matter of routine.

It's become a truism that real terrorists always get caught after the fact; that is, once the harm has been done. Well, *almost* always. In a 2009 case that an expert called "one of the most serious terrorist bomb plots developed in the United States," the FBI arrested [Najibullah Zazi](#), [Adis Medunjanin](#) and [Zarein Ahmedzay](#) for conspiring to detonate bombs on the New York subways (so far Zazi and Ahmedzay have pled guilty.) Although it's unknown exactly what first led agents to the trio, who like Shazhad had recently returned from Pakistan, the case was built on extensive physical and electronic surveillance and to all appearances interrupted a Madrid-style attack ostensibly planned for the September 11 anniversary.

Groups produce more noise and more opportunities for detection and intervention than individuals. But when evildoers are lone-wolves like Shazhad, a naturalized U.S. citizen without known extremist ties, prevention may be hopeless. [Timothy McVeigh](#), executed for the 1995 Oklahoma City bombing, was a Gulf-war veteran with a Bronze star. Obsessed with guns and carrying an intense hatred for the government, the obscure militant with a clean record committed the second most devastating terrorist act in U.S. history, taking 168 lives and injuring nearly 700.

Fifteen months later one person was killed and more than one-hundred were wounded when another shadowy radical set off a bomb during 1996 Summer Olympics. [Eric Rudolph](#) went on to bomb several abortion clinics, killing an off-duty cop and severely injuring several other bystanders before he was caught.

According to House intelligence subcommittee chair [Rep. Jane Harman](#) (D - Calif.), anticipating what unknowns like McVeigh, Rudolph, Abdulmutallab and Shazhad might do is a daunting task. "It's a tough problem. Think about this kid [Shazhad] living in the suburbs of Connecticut. Nobody knew who he was. How do you uncover this?"

If going after individuals is too tough, what about restricting the sale of bomb-making materials? Unfortunately, these are exceedingly commonplace. "Are we going to regulate the purchase of propane gas, firecrackers and fertilizer?" asks [Paul Rosenzweig](#), a senior security official under Bush. "That means regulating every farmer in America."

Others hold out more hope. Another former Bush official, [Frances Townsend](#), favors a "dynamic and target-based intelligence system" that would take into account factors such as Shazhad's odd trip to Pakistan (he spent five months there, not paying his mortgage and leaving the bank to foreclose on his house.)

Her suggestion – that intelligence databases expand their reach to encompass a host of factors that may be associated with terroristic intent – is an old idea. Collect as much information as possible on individuals who trip the system in any way, from foreign travel to association with known troublemakers to cell phone numbers, then filter it using whatever indicia of terrorism can be developed. Presto – a terrorist lead is born!

Indeed, that's one of the approaches that your blogger and his former ATF colleagues successfully used to [develop leads on gun traffickers](#). Police agencies in Southern California recover thousands of guns each year. These were traced to the first retail dealer and the results entered into a database. Leads were developed by filtering guns recovered soon after purchase – say, within six months – with known indicators of trafficking (e.g., guns purchased by females and recovered from gang members). Naturally, at some point inquiries must shift to the field, where processing becomes far more resource-intensive. In the end, there is only enough time and manpower to give attention to very few leads, meaning that many worthwhile targets will remain unmolested.

While the ultimate consequences of gun trafficking are grim, they're obscured by the everyday criminal mayhem that we accept without blinking an eye. That's not true for terrorism, where one episode is one too many. Yet whether it's generating leads on gun traffickers or terrorists the constraints are the same. Cast too wide a net and you'll be overwhelmed, swamping the system, irritating honest citizens and possibly infringing on their rights as well. Select too few and should a bomb go off you'll be criticized for overlooking what critics will quickly point out should have been obvious from the start.

A lot seems to depend on just how long it's been since the last attack. Three months after the government invoked a broad-spectrum approach to screening foreign travelers (its response to the Christmas Day bombing attempt) [President Obama](#) announced a major relaxation. An official justified the loosening. "It's much more tailored to what intelligence is telling us and what the threat is telling us, as opposed to stopping all individuals from a particular nationality or all individuals using a particular passport."

Of course, had this more permissive approach been in place when Shazhad returned from Pakistan his cell phone number would have never been become a matter of record. He'd be in Pakistan right now, thumbing his nose at America.

Regrettably, when it comes to terrorism, it takes only *one* wacko to tango.

Posted 6/14/09

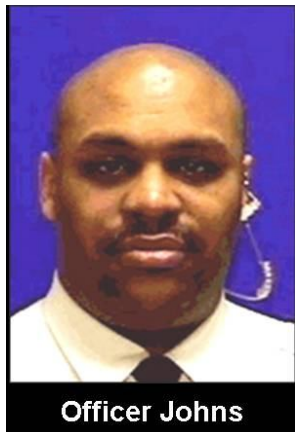
## THE FACE OF EVIL

*Holocaust Museum shooter part of an extensive, loosely-federated hate movement*



[Click here to link to video](#)

By *Julius (Jay) Wachtel*. It was only a matter of time until a new wacko joined Timothy McVeigh, Richard Butler, Matthew Hale and William Pierce in the racist hall of fame. On June 10, 2009 [James W. von Brunn](#), 88, approached the main entrance of the [U.S. Holocaust Memorial Museum](#). [Officer Stephen Tyrone Johns](#), 39, helpfully opened the glass door. Von Brunn stepped inside, pulled a .22 rifle from his coat and fired. Johns, a six-year veteran, fell mortally wounded. His colleagues instantly reacted, the explosive sounds of their return fire ricocheting inside the cavernous building and sending visitors scurrying for cover. Von Brunn was struck in the head and at this writing remains in critical condition.



Although von Brunn isn't a household name in extremist circles he is known to Federal law enforcement. In 1981 he [burst into the Federal Reserve](#) packing a revolver and sawed-off shotgun inside a trench coat. Intending to "arrest" the Fed's members for violating the Constitution, America's self-anointed savior was captured without incident in the room next to where the Board was meeting. He served six and one-half years in Federal prison. (To read his grandiose account of what happened [click here](#).)

Von Brunn's homepage and [biography](#) (links are to archived versions) describe him as a decorated WW-II Navy man. There's a letter of reference from the late [Rear Admiral John G. Crommelin](#), another far-right zealot, who fawned that von Brunn "deserves the gratitude and assistance of every White Christian citizen of these United States." While imprisoned von Brunn wrote a plea to the Secretary of the Navy in

which he accused the Fed of furthering a Marxist/Jewish conspiracy to subjugate the chosen race. He never got a response.

Von Brunn's inspiration is a [white supremacist ideology](#) that dates back to the founding of the Ku Klux Klan. At its core is the conviction that by natural law European Christians are the master race, but that our government has been co-opted by rich Jews, blacks, immigrants and mongrels to whose whims everyone else must cater. In effect, von Brunn and his ilk aren't bigots: they're *victims*.

Adherents of this hateful philosophy have taken different paths to resistance. Some, including the neo-Nazi [Aryan Nations](#), Waco's messianic [Branch Davidians](#) and the similarly oriented [Covenant, Sword and Arm of the Lord \(CSA\)](#) built compounds where members and their families lived apart from conventional society. Inevitably, their activities brought them into conflict with authorities. In the early 1980's members of an Aryan Nations splinter group known as "[The Order](#)" staged a series of bank robberies, culminating in a wild shootout with the FBI. In 1998 Aryan Nations security guard [Buford Furrow](#) went on a spree, wounding several persons at a Jewish center and killing an Asian letter carrier. A racial harassment lawsuit ultimately led to the organization's bankruptcy and the sale of their property.

During the 1980's the Branch Davidians, in Texas, and the CSA, in Arkansas, acquired large quantities of illegal weapons and waited for the apocalypse. Federal agents neutralized the CSA in a 1985 raid that passed without major incident. However, a 1993 attempt to replicate that success with the Branch Davidians led to the shooting death of four ATF agents. Eighty-two members of the sect, including twenty children, later died in a fire that the Feds insist was purposely set by the sect.

After that tragedy authorities took a more measured approach. Three years later, in perhaps the last standoff of any size, twenty members of a tax-resistance group called the "[Montana Freeman](#)" holed up in their compound for nearly three months while dodging Federal tax and fraud warrants. Instead of sending in SWAT teams the FBI quietly waited them out, and in the end all peacefully surrendered.

Supremacist groups have remained mostly quiet during the past decade. That's not to say that everything's been rosy. Since [Timothy McVeigh's](#) murderous 1995 attack on the Oklahoma City Federal Building, which cost 168 innocent lives, deranged, gun-wielding loners with a victimhood complex have staged a number of mini-massacres at malls, universities and other public places. Most recently, three Pittsburgh (Penn.) police officers were killed and a fourth was wounded by a fanatic who complained about "the Obama gun ban that's on the way."



With the election of a black liberal as President, observers from the [left](#) and, surprisingly, a famous TV news anchor from the [right](#) have expressed concern that overheated conservative rhetoric has legitimized hate, energized the radical fringe and set the stage for even more mayhem.



[Click here to link to video](#)

Coming on the heels of the [murder of a physician](#) at a Kansas abortion clinic, von Brunn's murderous act is raising new fears that a resurgence of extremist violence is in the works. We'll soon know whether that's true.

Posted 10/4/09

## DOPE, NOT ROPED

*More losers get hurled, or hurl themselves, at America. Should we tremble?*



By Julius (Jay) Wachtel. Since 9/11 the FBI has to all appearances enjoyed a remarkable string of victories against terrorism. From the [Fort Dix Six](#) and the [Liberty City/Sears Tower Seven](#), to the [Rumble in the Bronx](#), the Feds have served up case after neatly-wrapped case of would-be bombers whose inner sanctums had been infiltrated by the Government from the very start.

Planting informers in lead roles, then getting targets to say and do enough to satisfy the elements of a crime has become the favorite way to proceed. Agents keep watch so that no one gets hurt, and dangerous stuff like explosives (duds, of course) is only furnished at the last, carefully choreographed moment. That's when the authorities swoop in, arrest everyone and take back their pretend bombs.

Case closed. Next!

But this time it was different. According to the [New York Times](#), Najibullah Zazi, 24, first came to the attention of FBI analysts in late summer 2009. A native of Pakistan, Zazi [emigrated](#) to New York City in the 90's. By 2005 he had dropped out of high school and was working a coffee cart owned by his father. In 2007 Zazi was regularly visiting Pakistan, where he entered into an arranged marriage and had two children. According to the FBI he would later admit that on his last trip, between August 2008 and January 2009, he took explosives training at an Al Qaida camp.

By then Zazi was in serious financial trouble, having so overspent his credit cards that he was forced into bankruptcy. In January 2009 he moved to Colorado and got a job driving shuttles at the Denver airport. His parents joined him in July. Thanks to store security cameras and after-the-fact interviews it's known that in August he and possibly as many as three associates ran around Aurora beauty supply stores buying

products whose ingredients were in a bomb-making recipe that FBI agents later found in Zazi's laptop.

When Zazi suddenly packed up a rental car on September 9, 2009 the FBI didn't know of these purchases, nor that Zazi had unsuccessfully tried to refine his concoctions in an Aurora motel room. Still, agents must have been aware of his overseas trips. And if Zazi's e-mail and cell phone were already being monitored, as [documents](#) filed in the case suggest, they would have also known that he had been in touch with an unidentified person to determine the "correct mixtures of ingredients to make explosives."

FBI agents tailed Zazi to New York City, where he arrived on September 10. As they still lacked an insider, information was frustratingly sketchy. Fearing the worst, NYPD anti-terror detectives working with the FBI apparently took it on themselves to ask an Imam who knew Zazi to help. Police also stopped and searched Zazi's car as he entered New York. To help FBI agents execute a "sneak and peek" search warrant they later towed the vehicle under pretext. Inside was a laptop that contained detailed bomb-making instructions and a browsing history suggesting that Zazi was looking to buy more chemicals.

Zazi was decidedly no genius. Still, when the Imam tipped him off that police were asking questions he [flew back to Denver](#) and stripped the laptop of its hard drive. Realizing that the jig was up, the FBI emerged from the shadows. Agents interviewed Zazi for two days. Although Zazi insisted that the reason for the trip was to meet with the person who was operating his father's coffee cart, he supposedly admitted training at an Al Qaida camp. Zazi stopped cooperating on the third day, leading the FBI to arrest him, his father and the Imam for lying to federal agents. Zazi was later [indicted](#) for conspiring to set off weapons of mass destruction. As of this writing none of his supposed helpers, an essential part of a conspiracy case, have been named.

In a New York Times analysis entitled "[Terror Case is Called the Most Serious in Years](#)," Karen J. Greenberg, executive director of NYU's Center on Law and Security trumpeted the Zazi case as being "real scary...the case the government kept claiming it had but never did." Other skeptics of past FBI counter-terrorism investigations agree. To be sure, this wasn't the usual [FBI rope-a-dope](#). There was no informer or undercover agent calling the shots. But neither is it comparable to 9/11, the Madrid Bombings or the more recent event in Bombay, which involved cadres of well-trained, highly disciplined terrorists. Poorly educated, bankrupt and holding down a menial job, Zazi was so marginal a figure that even he must have known it.

Of course even hopeless bumblers must be stopped. Zazi likely had associates; [according to MSNBC](#), three New York City men who reportedly helped him buy

chemicals in Aurora are under watch. Had the FBI been able to keep the investigation under wraps Zazi and his friends, if any, might have eventually succeeded in mixing a lethal cocktail. They could have also blown themselves up or hurt others while trying.

Still, we should be wary of elevating hopeless bumblers to the top of the threat pyramid simply because the Government didn't induce them to act. If this ring of incompetents exists, calling it a major threat is a stretch. Even if an Al Qaida connection holds, it's likely just another attempt to hurl as many losers at America as possible, hoping that one will succeed. In any event, the Zazi episode amply demonstrates the difficulty of building a traditional criminal case against terrorists while maintaining a reasonable assurance that things won't literally blow up in one's face. It's far, far more challenging than roping in dopes. Not incidentally, it also promises to produce far fewer "successes."

As for major plots, we hope that the FBI's on them, too. But what happened last week isn't particularly reassuring. In [two unrelated terrorist stings](#), FBI agents arrested Hosam Smadi, 19 and Michael Finton, 29 when they parked vehicles supposedly containing bombs, Smadi in the underground garage of a Dallas (Tx.) office tower, and Finton across from a Springfield (Ill.) Federal courthouse, and then tried to remotely activate the devices. Smadi was first contacted by an undercover agent trolling extremist chatrooms, while Finton was lured in by an informer. And, yes, the vehicles and bombs had been furnished by the Government.

Posted 5/23/10

## CLOSING THE “TERROR GAP”

*Concerns about gun rights trump worries about terrorism*



[Click here to link to video](#)

Moderator to panelists (at 17:50): *Should people on the no-fly watch list be able to purchase a gun? Mr. Campbell?*

Tom Campbell (pauses, then whimsically): *No!* (audience laughs)

Moderator: *Mr. DeVore?*

Chuck DeVore: *Yes, if they haven't been convicted of a felony.*

Moderator: *Ms. Fiorina?*

Carly Fiorina: *Yes.*

Tom Campbell (feigns shock): *Oh, my goodness!* (audience laughs)

*By Julius (Jay) Wachtel.* One would think that a five-term Republican congressman with an economics Ph.D and a Stanford law degree (he's currently a visiting professor at Chapman Law School) would know better than to push *that* button. Yet there was Tom Campbell, Senator Barbara Boxer's leading challenger, [advocating gun control](#). His competitors in the Republican primary, State Assemblyman [Chuck DeVore](#) and former HP chairperson [Carly Fiorina](#), could hardly contain their glee.

“It's all the Second Amendment, Tom,” snickered DeVore. “That's why Tom Campbell has kind of a poor rating from the National Rifle Association right there,” echoed Fiorina.

She wasn't exaggerating. According to an NRA spokesman [Campbell's last rating was an “F.”](#) You can't say it wasn't earned. While serving in the House (he left in 2000) Campbell supported both the assault weapons ban and a waiting period to buy guns, positions that probably played well in his leftie San Francisco Bay-area district but left the Grand Old Party cold.

Well, just how often *do* terrorists buy guns? A recent [GAO report](#) revealed that between 2004 and 2010 six-hundred fifty persons on the NCIC “known or suspected terrorist file” (it draws from terrorist watch lists) made 1,225 firearm transactions at licensed gun dealers, and three explosives transactions at licensed explosives dealers. Since records are automatically purged once a check is complete we can’t know if they really went through with a purchase, and if they did, how many guns changed hands. But there’s plenty of indication that many returned for seconds. About *two-thirds* of the putative buyers had their records checked on more than one occasion, *and six on ten or more*. In all, 1,119 transactions including the three explosives sales were approved, while 109 were denied for reasons such as a disqualifying criminal record.

How is it that a “known or suspected terrorist” can buy guns or explosives in the first place? [Title 18, United States Code, section 922\(g\)](#) bars felons, those under felony indictment, fugitives, unlawful drug users, persons adjudged of being mentally defective, and those convicted of domestic violence or under a restraining order from having guns. [18 USC 842i](#) does the same for explosives. When the Gun Control Act of 1968 was enacted there was no such thing as a terrorist watch list, so “terrorists” are nowhere mentioned.

In their report the GAO suggested how the Attorney General could deny guns to suspected terrorists while assuring “accountability and civil liberties protections.” As one might expect, the NRA is having none of it. [Calling such notions “anti-American,”](#) the nation’s preeminent gun rights organization accused proponents of [SB 1317](#) and [H.R. 2159](#), which would implement the GAO’s recommendations, of using fear and what Senator Lindsay Graham (R-SC) disparagingly called “some list that is, at best, suspect” to strangle the Second Amendment.

Considering the GOP’s lack of concern about the civil rights of terrorism suspects (think “enhanced interrogation techniques”) their position on terrorists and guns reeks of contradiction. Yet the view of some anti-gunners seems equally opportunistic. In a website breathlessly entitled “[Terror Gap](#),” Mayors Against Illegal Guns, the group co-chaired by New York City Mayor and ardent gun foe Michael Bloomberg, demands that Congress enact a law to prohibit persons on terrorist watch lists from buying guns and explosives: “We can’t afford another tragic event that leads to the loss of American lives because of this flawed and dangerous policy.”

But would a ban *really* keep us safer? For the answer look no further than to another Mayors Against Illegal Guns website, “[Close the Loophole](#).” There you’ll find spine-tingling accounts of the ease with which anyone can go to a gun show, peruse tables where private citizens display dozens of firearms for sale from their “personal collections” and legally buy everything from .22 caliber pistols, to 7.62 mm.

assault rifles with high-capacity magazines, to cases of ammunition, and all without showing ID or going through any checks whatsoever!

Neither Federal law nor the laws of most States requires a criminal records check or any paperwork for gun transfers between private parties. With a “loophole” that big, one would think that no self-respecting terrorist would bother patronizing a licensed dealer. But private sellers capitalize on the anonymity they offer by charging considerable premiums. Their stock is also less ample, and much of it is used. For the best price and selection criminals and other unsavory characters often have straw buyers purchase guns directly from licensed dealers. Really, who’s to find out? Feds are prohibited from keeping a central registry of gun sales, while [18 USC 922t](#) mandates that completed record checks be purged.

In most states, until a firearm physically falls into the hands of police its existence is a cipher. That’s the concern addressed by yet another proposal to help close the “terror gap.” [Senate Bill 2820](#), introduced by Senator Frank Lautenberg (D-NJ), would give authorities a heads-up on suspicious gun purchases by preserving criminal record checks for ten years in the case of buyers on terrorist watch lists, and six months for others. Naturally, if a gun is privately sold or purchased from a dealer by a straw buyer, all bets are off. In any event, the bill is strongly opposed by the NRA so its chances of being enacted are nil.

More than four decades after the assassination of Robert F. Kennedy and the passage, that same year, of the pitifully weak Gun Control Act of 1968 (since hobbled even more) meaningful reform of the gun marketplace remains out of reach. Meanwhile the lethality and ubiquity of firearms has exponentially increased.

Terrorists and criminals: rest easy!

Posted 5/31/08

## 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.