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## 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.