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No Convictions in Trial Against Muslim Charity

By LESLIE EATON

DALLAS, Oct. 22 — A deadlocked federal jury here did not convict any leaders of a Muslim charity who were charged with supporting Middle Eastern terrorists, and the judge today declared a mistrial in what has been widely viewed as the government's flagship terror-financing case.

The case, involving the Holy Land Foundation for Relief and Development and five of its backers, is the government's largest and most complex legal effort to shut down what it contends is American financing for terrorist organizations in the Middle East. President Bush announced he was freezing the charity's assets in 2001, saying that the radical Islamic group Hamas had "obtained much of the money it pays for murder abroad right here in the United States."

But at the trial, the government did not allege that the foundation, which was based in a Dallas suburb, paid directly for suicide bombings. Instead, the prosecution said, the foundation supported terrorism by sending more than \$12 million to charitable groups, known as zakat committees, which build hospitals and feed the poor.

The prosecution said the committees were controlled by Hamas and contributed to terrorism by helping Hamas spread its ideology and recruit supporters. The government relied on Israeli intelligence agents, using pseudonyms, to testify in support of this theory.

But prosecutors appeared to have made little headway in convincing the jury..

The case involved a total of 197 counts, including providing material support to a foreign terrorist organization, years of investigation and preparation, almost two months of testimony and more than 1,000 exhibits, including documents, wiretaps, transcripts and videotapes dug up in a backyard in Virginia.

After 19 days of deliberations, the jury acquitted one of the five individual defendants on all but one charge, on which it deadlocked. A majority of the jurors also appeared ready to acquit two other defendants of most charges, and could not reach a verdict on charges against the two principal organizers and the foundation itself, which had been the largest Muslim charity in the United States until the government froze its assets in late 2001.

The decision today is "a stunning setback for the government, there's no other way of looking at it," said Matthew D. Orwig, a partner at Sonnenschein Nath & Rosenthal here who was, until recently, United States Attorney for the Eastern District of Texas.

"This is a message, a two-by-four in the middle of the forehead," Mr. Orwig said. "If this doesn't get their attention, they are just in complete denial," he said of Justice Department officials, whom he said may not

have recognized how difficult such cases are to prosecute.

David D. Cole, a professor of constitutional law at Georgetown University, said the jury's verdict called into question the government's tactics in freezing the assets of charities using secret evidence that the charities cannot see, much less rebut. When, at trial, prosecutors "have to put their evidence on the table, they can't convict anyone of anything," he said. "It suggests the government is really pushing beyond where the law justifies them going."

And Jimmy Gurulé, who was an undersecretary of the Treasury when that agency froze Holy Land's assets, described the outcome as "the continuation of what I now see as a trend of disappointing legal defeats" in terror-financing cases. Two previous cases, in Illinois and in Florida, ended with hung juries and relatively minor plea deals, he said.

In the Holy Land case, lawyers for defendants told the jury that their clients did not support terrorism but were humanitarians trying to lessen suffering among impoverished Palestinians. Though their clients might have expressed support for Hamas, the defense argued, that was before the United States government designated it as a terrorist organization in 1995.

The outcome of the trial emerged during a morning of confusion for jurors and those on both sides of the case, who had been waiting to hear the verdict since the jury returned it on Oct. 18. It was sealed until today because the presiding judge, Chief Judge A. Joe Fish, was out of town.

In the verdict, the jury said it failed to reach a decision on any of the charges against the charity and two of its main organizers, but acquitted three defendants on almost all counts.

But in a highly unusual development, when the judge polled the jurors, three members said that verdict did not represent their views. He sent them off deliberate again; after about 40 minutes, they said they could not continue.

In the end, one defendant, Mohammed El-Mezain, was acquitted on all but one charge, involving conspiracy, on which the jury failed to reach a verdict. A mistrial was declared on that count, and on all the other counts involving the other defendants.

James T. Jacks, the first assistant United States Attorney, said in court that the government would retry the case. Both prosecutors and defense lawyers have been barred from discussing the case in the press, and Judge Fish said that order continued in force.

The exact nature of the jurors' disputes, and their reasoning in the cases, remained unclear after the verdict. Judge Fish barred reporters from attempting to contact the jurors, although he said he would provide jurors with reporters' telephone numbers if they wanted to discuss the case.

One juror told The Associated Press that the panel found little evidence against three defendants and was evenly split on charges against Shukri abu Baker, the former charity's president, and Ghassan Elashi, its chairman.

"I thought they were not guilty across the board," said the juror, William Neal, a 33-year-old art director

from Dallas. The case “was strung together with macaroni noodles,” Mr. Neal said. “There was so little evidence.”

He said the government should not retry the case — an opinion supported by Holy Land’s supporters, who packed the courtroom during the trial and who carried some defendants around on their shoulders outside the courthouse chanting “Praise God” in Arabic.

“The government spent 13 years and came back empty-handed,” said Khalil Meek, who is president of the Muslim Legal Fund of America and spokesman for an alliance called Hungry for Justice. “I would call that a victory — an overwhelming defeat for the government.”

Lawyers for some defendants said their clients were being prosecuted because of their family ties to Hamas leaders. One defendant, Mufid Abdulqader, is the half-brother of Khalid Mishal, a Hamas leader who has been designated as a terrorist by the United States government.

Another Hamas official and designated terrorist, Mousa abu Marzook, is married to a cousin of Mr. Elashi, who was sentenced last year to almost seven years in prison for having financial dealings with Mr. Marzook and for violating export laws

Mr. Elashi’s daughter, Noor, who was in the courtroom every day during the trial, said she considered her father a hero. “He was singled out for feeding and clothing and educating the children of Palestine,” she said. “Giving charity to the Palestinian people has become a crime in this country.”

Gretel C. Kovach contributed reporting.

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