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# TIME

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## Preemptive Terror Trials: Strike Two

By Amanda Ripley

If you were watching the movie version of the terrorism trial that ended Thursday in Miami, Fla., you might walk out around the time the seven suspects take an oath to al-Qaeda in a warehouse. The scene would feel so contrived, such a low-budget mockumentary of itself, that you might not be able to stomach another second.

The fact that this videotaped scene was in reality the centerpiece of the government's case against seven defendants accused of conspiring to wage war against America is a testament to the strange challenges of trying to preemptively prosecute the war on terrorism.

On Thursday, after nine days of deliberation, a jury acquitted one of the defendants, Lyglenson Lemorin, and gave up on the remaining six. The judge declared mistrials in those cases, and a new trial is scheduled for next year. It was a major loss for the government. In 2006, after the arrests, then-U.S. Attorney General Alberto Gonzales heralded the arrests and warned that, if "left unchecked, these homegrown terrorists may prove to be as dangerous as groups like al-Qaeda."

The defendants in the Liberty City case (named after the poor Miami neighborhood where they lived), were members of the Moorish Science Temple, a sect that blends Islam, Christianity and Judaism and does not recognize the legitimacy of the U.S. government. (Moorish Science Temple leaders have since disavowed any links to the men.) On March 16, 2006, the men were recorded by the FBI vowing to be Islamic soldiers and to act at the direction of al-Qaeda, according to a motion filed by the government, which played the tape twice during the trial.

The evidence also included 12,000 recorded conversations — including one in which the leader of the ragtag group, Narseal Batiste, spoke of waging a "ground war" — surveillance photos some defendants took of federal buildings in Miami, wish lists of weapons and a request for \$50,000 given to an FBI informant purporting to represent al-Qaeda.

We don't know yet why the jury decided not to convict anyone in this case. "It was a very difficult case with a lot of evidence," jury foreman Jeffrey Agron, a school principal, told the *Miami Herald*. "People see evidence in different ways. There were different takes that people had." It's possible that jurors were struggling with the very thing that makes the Liberty City case so typical of the Justice Department's war on terrorism: it feels phony.

The entire situation was concocted by the government. The warehouse was paid for by the FBI, and the defendants moved their operations there at the suggestion of an undercover informant who was also paid by the FBI. The swearing-in ceremony was led by the informant — who at another point also suggested a plan to bomb FBI offices in Miami. "The case was written, produced and directed by the FBI," defense attorney Albert Levin said in his closing arguments.

Since 9/11, the FBI has begun using legions of Muslim or Arabic informants in hopes of rooting out radicals before they

strike. The main informant in this case was a Middle Eastern man named Elie Assad. He had worked for the FBI for years before he approached Batiste, posing as an al-Qaeda operative named "Brother Mohammad." He earned about \$80,000 for his services.

Defendant Batiste, a father of four who ran a struggling construction business, claimed he was conning the informant, just as the informant was conning him. He says he was desperate for money, so he went along with the informant in hopes of tricking him into giving him \$50,000.

It would be better, of course, if undercover informants were trained FBI agents, instead of sometimes unsavory characters with perverse incentives. "With informants motivated by money, it's simple," says Dennis Fitzgerald, an expert on informants and a former police officer in Liberty City. "No case means no money — or at least less money."

But at this point, the FBI and police departments have nowhere near enough people who could convincingly work undercover in terrorism cases. "The number of undercover agents is minuscule; the number of confidential sources is much larger," says Art Cummings, deputy assistant director of counterterrorism at the FBI.

But the heavy reliance on informants has led to cases that sometimes appear to exist in the land of make-believe. At one point during the Liberty City investigation, Batiste suggested to the informant that they could blow up the Sears Tower so that it would fall into Lake Michigan and create a tsunami. "Where did you get this idea?" Batiste's attorney later asked him on the stand. His answer was believable: "Just from watching the movies."

"Are we interested in finding terrorists or creating them?" says Joshua Dratel, who has defended a number of suspects in other terrorism cases. "Even in cases where people are found guilty, I'm not sure that [this strategy] is necessarily finding people who are a genuine danger. What it's really doing is finding people who — with enough inducement and encouragement — may do something. But whether they would ever do anything on their own, we'll never know."

Still, the FBI is only doing what we have asked it to do. If we want to arrest people before they act simply because they have the potential to do something bad, then this is what we get. The FBI is shutting down groups of extremists before they can do any permanent damage.

So despite the B-movie cast of characters, the stakes in this case were actually pretty high. The fact that it ended in a mistrial — coming shortly after a jury acquitted or hung on all counts in the Holy Land Foundation case in Texas, which had been the government's showcase terrorism-financing prosecution — is striking. If the government can't win this kind of case, it may show that juries cannot get behind preemptive prosecutions — that, perhaps, they don't agree with prosecutor Jacqueline Arango, who said in her closing arguments, "The government need not wait until buildings come down or people get shot to prove people are terrorists."

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