

Undue Process

Innocents have been entangled in the Justice Department's anti-terror dragnet.

By James Bovard

THE TRAIN WRECKS of the Justice Department's domestic War on Terror continue to pile up. Despite the perennial victory claims by Attorney General John Ashcroft and other high officials, three recent cases vivify how federal prosecutors and FBI agents continue tripping over the evidence—or worse.

On May 7, the FBI arrested Brandon Mayfield, an Oregon lawyer, for his alleged involvement in the Madrid train bombings of March 11 that killed 191 and left 2,000 wounded. A U.S. counterterrorism official (almost certainly an FBI or Justice Department official) told *Newsweek* that Mayfield's fingerprint was an "absolutely incontrovertible match" to a copy of the fingerprint found on a bag of bomb detonators near the scene of the Madrid attack. News of Mayfield's arrest provided alarming evidence that Americans were involved in international conspiracies to slaughter civilians around the globe, and he was informed that he could face the death penalty for his crimes.

Employing Patriot Act powers, the feds, prior to the arrest, conducted secret searches of Mayfield's home and tapped his phone and e-mail. After the arrest, they froze his bank accounts. The FBI's arrest affidavit revealed that its agents had "observed Mayfield drive to the Bilal Mosque located at 415 160th Ave., Beaverton, Oregon, on several different occasions." Another incriminating detail in the arrest warrant: Mayfield

advertised his legal service in the Muslim Yellow Pages. (Mayfield, a former Army lieutenant, converted to Islam and has an Egyptian wife.) In early April, the Spanish police described Mayfield "as a U.S. military veteran who was already under investigation by U.S. authorities for alleged ties to Islamic terrorism," according to the *Los Angeles Times*.

Yet the key to the case—the fingerprint—was shakier than a George W. Bush press conference. The FBI quickly claimed to have achieved a match on the partial print, but, on April 13, Spanish government officials warned the FBI that their experts were "conclusively negative" that Mayfield's print matched the print on the bomb detonator bag. The FBI responded by flying one of its fingerprint analysts to Madrid to explain to the Spaniards why they were wrong. But during the Madrid visit, the FBI expert never requested to see the bag or to get a better copy of the print. The arrest warrant in early May wrongly informed a federal judge that the Spaniards were "satisfied" with the FBI's match.

Mayfield was arrested as a "material witness," thereby permitting the feds to hold him as long as they pleased without charging him with a specific crime. The Justice Department refuses to disclose how many people have been or are being held as "material witnesses" in prisons around the country.

After Mayfield was arrested, FBI agents raided his home and office and carted off boxes of his papers and his family's belongings. Among the items seized were "miscellaneous Spanish documents," according to an FBI statement to the federal court. These supposedly incriminating papers turned out to be the Spanish homework of Mayfield's son. Perhaps elite FBI investigators suspected that "Hola, Paco. Como Estas?" was a secret code.

Though the FBI never possessed anything on Mayfield aside from a misidentified fingerprint, it did not hesitate to cast him in sinister colors. The FBI informed a federal judge: "It is believed that Mayfield may have traveled under a false or fictitious name." But Mayfield, whose passport expired the previous year, insisted he had not left the country. The FBI apparently never bothered to check whether Mayfield had been absent from the U.S. before making one of the most high-profile terrorism arrests of the year.

On May 20, after Spanish authorities announced that they had found a clean match with the fingerprint, the Justice Department acquiesced to Mayfield's release. A few weeks later, Attorney General Ashcroft informed the Senate Judiciary Committee that his case vindicated the American system of justice: "As a matter of fact, the pride of our system is that people are found innocent because we adjudicate these things."

But there was effectively no adjudication in this case because Mayfield was classified as a “material witness”—which meant that the feds could hold him as long as they chose, or at least until his detention became too embarrassing. Ashcroft also testified, “When we learned that the reservations of the Spanish were so substantial, we went to the court, asked for the release of Mr. Mayfield.” In reality, the Justice Department did not acquiesce until the Spanish government announced that they had arrested the Algerian whose fingerprint matched that on the bag.

FBI director Robert Mueller visited Portland a month after Mayfield’s release and announced that FBI agents had acted appropriately. Yet, as a *Portland Oregonian* editorial noted, “If not for the Spanish authorities doing their own investigation, Mayfield likely would still be in jail today.” And sadly, the unfortunate Mr. Mayfield is not an isolated case.

On Aug. 5, federal agents carried out middle-of-the-night raids to nab a pizzeria owner and an ambulette driver. Deputy Attorney General James Comey announced at a Washington news conference: “Anyone engaging in terrorist

fired missile to kill a Pakistani diplomat in New York. The feds used the Patriot Act to sweep up Aref’s phone calls and e-mail messages. Perhaps the most decisive item they unveiled at the initial court hearing was the fact that Aref’s name was discovered in a notebook at an alleged terrorist camp in Iraq (after a night attack in which U.S. soldiers killed 80 of 82 people at the camp). Federal prosecutors brandished the fact that he was identified as “the Commander” and declared that the obliterated group was part of Ansar al-Islam, an al-Qaeda affiliate. The feds’ charges persuaded a federal court to lock up both defendants without bail.

A few weeks later, however, at another court hearing, the Justice Department admitted that the key word was mistranslated. Instead of Arabic, the writing was actually Kurdish; instead of “commander,” it merely said “brother.” Aref, a Kurdish refugee who was the leader of an Albany storefront mosque, had relatives back in the homeland. Even though the feds had been in possession of the notebook for more than a year, they had not bothered to verify the Defense Department’s translation before creating an elaborate sting.

Magistrate David Homer, “There is no evidence ... to support the claim that Mr. Aref has any contact with any terrorist organization.”

Federal prosecutors responded quickly to the translation debacle, seeking to invoke the Classified Information Procedures Act. A statement from the Justice Department’s Counterterrorism Section warned, “The United States believes that disclosure of this material would raise issues of national security ...”

It was curious how a case about a phony plot, an inoperable missile (which the informant purportedly showed the defendants), and phony claims by the government suddenly raised national security concerns. The Justice Department unsuccessfully sought to avoid turning over the transcripts of discussions between the defendants and its agent provocateur. After some of the information was released, “transcripts of the undercover tapes show how much prodding by the informant was needed to lure Hossain into the fictitious terrorist plot,” the *Albany Times-Union* noted.

The defendants were released on \$250,000 bail each, after spending 20 days in custody. Another court hearing is scheduled in Albany for Sept. 15 on whether the Justice Department will be permitted to use the Classified Information Procedures Act to shield its case.

DOJ could use a win, for earlier this month, federal prosecutors were forced to admit that their biggest victory over a terrorist cell was in fact a sham. A week after the 9/11 attacks, federal agents nabbed three Arabs living in an apartment in Detroit. (A fourth suspect was snared in North Carolina.) Federal prosecutors described the men—arrested during a raid in which the FBI was looking for another Arab on a terrorist watch list—as a “sleeper operational combat cell.” Two of the alleged cell members were convicted in June 2003 on charges

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planning would be very wise to consider whether their accomplice is not really one of our guys. We are working very, very hard to infiltrate the enemy.”

Yassin Aref and Mohammed Hossain were arrested for allegedly taking part in a plot to launder money from a government informant who claimed to be involved with a plan to use a shoulder-

The Justice Department also misrepresented where the notebook was discovered. The Defense Department did not identify the targeted group as terrorist-connected. Instead, at the time of the attack, Lt. Gen. David McKiernan declared, “I will simply tell you that it was a camp area that was confirmed with bad guys.” According to Federal

of providing material aid and support to terrorism. A third was convicted on fraud, and a fourth was acquitted. Ashcroft hailed the verdict: "Today's convictions send a clear message: The Department of Justice will work diligently to detect, disrupt and dismantle the activities of terrorist cells in the United States and abroad."

INSTEAD, THEY ARE A **LITANY OF CREDIT-CARD FRAUD, VISA VIOLATIONS, AND OTHER OFFENSES WHOSE PROSECUTION DOES NOTHING TO PROTECT AMERICA AGAINST DEADLY FOREIGN THREATS.**

The Detroit bust was the only case in which the feds appeared to have nailed a group that may have actually been planning attacks. But after the courtroom victory, the case began to crumble. Federal Judge Gerald Rosen ordered the Justice Department to investigate possible misconduct by lead prosecutor Assistant U.S. Attorney Richard Convertino and others in the case. The controversy mushroomed when Convertino sued Ashcroft, charging him with "gross mismanagement" in the War on Terror.

Perhaps the most decisive physical evidence in the trial was a day planner with a couple of pages of sketches. Federal prosecutors assured the jury that one drawing was an aircraft hanger at a U.S. military base in Turkey and another represented a military hospital in Jordan.

Justice Department prosecutors knew that government experts did not agree with those claims. Instead, most who analyzed one of the simple sketches concluded that it was a rough outline map of the Middle East, not an air-base target in Turkey. At the trial, defense lawyers requested photographs of the alleged Jordanian hospital. Prosecutors falsely denied possessing such photos.

The Justice Department's formal investigation, released in early September, concluded, "It is difficult, if not impossible, to compare the day planner sketches with the photos and see a correlation."

The most important witness to testify against the alleged terrorist cell was Youssef Hmimssa, who co-operated in part because he faced credit-card and

other fraud charges. The *Detroit News* noted that Hmimssa was "a self-described scam artist and crook." Yet, on the day after Hmimssa finished testifying, Ashcroft publicly declared his co-operation had been "a critical tool" in fighting terrorism and that "his testimony has been of value, substantial value."

A Justice Department inquiry found that prosecutors failed to turn over more than 100 documents to defense attorneys during the trial, including a letter written by a convict who served time with Hmimssa that stated that the star witness had bragged about "how he lied to the FBI" on the terrorist-cell case.

Moreover, Convertino ordered FBI agents who interviewed Hmimssa for more than 20 hours to take no notes during the interview. Instead, he briefed the agents after the sessions with Hmimssa and made his own notes, which he repeatedly altered. The Justice Department report observed that there were "discrepancies between these [Convertino's notes] versions, supporting defense counsel's claims that Hmimssa's testimony evolved over time." The report noted that "Con-

vertino's approach caused significant controversy" and that one FBI agent was "adamantly opposed" to such a method.

Judge Rosen overturned the convictions declaring, "the prosecution materially misled the court, the jury and the defense as to the nature, character and complexion of critical evidence that provided important foundations for the prosecution's case."

These three instances may be only the tip of the iceberg as the government can usually rely on acquiescent federal judges or coerced plea bargains to keep most of its dirty laundry out of view. The public soundbites seek to reassure us that the Justice Department's domestic War on Terror is going well by invoking largely meaningless numbers. In a July report on the Patriot Act, DOJ bragged, "the Department has charged 310 defendants with criminal offenses as a result of terrorism investigations since the attacks of September 11, 2001, and 179 of those defendants have already been convicted." But the vast majority of the convictions have had nothing to do with terrorism. Instead, they are a litany of credit-card fraud, visa violations, and other offenses whose prosecution does nothing to protect America against deadly foreign threats—while the pursuit of PR victories over bogus plots diverts resources from real terrorist dangers.

As the election draws closer, the Bush administration may unveil new arrests on terrorism charges. If so, it would be wise to wait until long after the triumphant press conferences to gauge whether the government has finally got the goods—or whether the busts are simply another effort simultaneously to frighten and comfort voters. ■

James Bovard is the author of the just-published The Bush Betrayal (Palgrave Macmillan) and seven other books.

Dry Out, Move On

When 12-steppers become addicted to recovery

By Mark Gauvreau Judge

THANK GOD I'm not in there anymore, I thought when I received the new fall catalogue from Hazelden, the famous drug rehab center in Minneapolis that this year is celebrating its 50th anniversary. In 1997, I published a book, *Wasted: Tales of a Gen-X Drunk*, with Hazelden. My drinking had gotten out of hand when I was younger, I wound up in Alcoholics Anonymous, then wrote a book about my experience. It was one of the dumbest things I've ever done.

For one, the book stinks. (It's out of print, thus my absence from the new catalogue.) For another, the recovery industry has changed addiction from being a point of embarrassment to one of pride. And as hard as I've tried, including writing *Wasted*, I've never been able to feel anything but awkward—at least—about my losing tussle with demon rum.

Of course, recovery as self-aggrandizement has been going on for a long time. Somewhere in the 1970s and 1980s, when the me-first narcissism of postmodern America melded with the bromides of the New Age, being "in recovery" went from being an attempt to get over the urge to drink and return to the old self to being an invitation to adopt an entirely new set of values, ideas, and even personality—with recovery and its entire catechism at the center. Celebrities like Betty Ford and Elizabeth Taylor opened up about their addictions, forcing the public to get over its shame about its own potted family members.

This was a good thing, I suppose, but then something else happened. Recovery from addiction became more than something we can talk about: it became something we should celebrate, a thing that formed the essence of the addict's personality, a way of life, a reason to have a party. We went from Betty Ford bravely telling other addicts to get to a hospital to celebrity d-lister Tom Arnold not being able to get through an interview—or even a single question—without talking about his recovery.

But should recovery be so ubiquitous in a former addict's life? According to the Hazelden catalogue, the answer is a definite "yes." The catalogue itself is 31 pages long—indeed, among all the kitsch it's hard to find *Alcoholics Anonymous*, the "big book" of AA that started it all in the 1930s. There are, however, recovery golf balls (with a camel and a butterfly on them, "two universal symbols of recovery"), greeting cards, a "dude cube" that registers emotions, ties (camels and steps, as in the 12 steps), pens ("higher-powered" pen glows in the dark), caps, t-shirts, jewelry (at least two dozen types of recovery medallions), a cotton throw ("When God closes a door," it reads, "He always opens a window"). There's even a higher-powered thermal mug. And the books! Books for the woman in recovery, the teen in recovery, dating in recovery, recovery for parents, even a book about cooking for sobriety. Don't worry about losing your place—there are recovery bookmarks with the 12 steps and Serenity Prayer on them.

What has been lost in all this is God. When Bill Wilson and Dr. Bob Smith founded Alcoholics Anonymous in the 1930s, their guidelines were clear: alcoholism was, according to Wilson, "an extreme example of self-will run riot," and the way to manage it was to turn to God. (Acknowledging a willful component, there is some genetic basis to alcohol addiction—at least if the doctors at the National Institutes of Health whom I interviewed for my book are to be believed—though I refuse to use the term "disease" to refer to my extended spring break.)

More often than not, to Wilson turning to God meant the Christian God. Wilson was heavily influenced by the Oxford Group, a 19th-century evangelical movement that emphasized humility and service to others. Wilson was also heavily influenced by Fr. Ed Dowling, a Jesuit priest who was an active supporter—but not member—in the early days of AA. Wilson's writings are stuffed with reference to the Deity, and in no case is there an attempt to make the addict God. Indeed, there are several warnings to avoid that very problem. To Wilson it was imperative that the alcoholic crush his ego and self-will and rely totally on the mercy of his Creator. Many in recovery would point out that the AA steps advise the addict to turn his life and will over to the care of God "as we understood Him." But does this mean anything goes? Apparently so. In the Hazelden catalogue there is only one book that refers to Christianity.