

TO CATCH A TERRORIST

The FBI hunts for the enemy within

By Petra Bartosiewicz

To fear and dehumanize alien Others, to ruthlessly hunt them down, is truly American.

—Carroll Smith-Rosenberg,
This Violent Empire

In June 2008, I attended a meeting in Albany organized by the FBI and designed to quell the growing fury over the arrest and prosecution of two local Muslim immigrants, Yassin Aref and Mohamed Hossain. The previous year Aref and Hossain, both leaders at a local mosque, had been sentenced to fifteen years in federal prison in connection with their role in a terrorism scheme that the press had dubbed the Albany “missile plot.” According to the FBI complaint, the pair had agreed to “make money through jihad” by laundering the proceeds from the sale of a shoulder-launched missile that a Pakistani militant group, Jaish-e-Mohammed, intended to use to assassinate a Pakistani dip-

Petra Bartosiewicz’s last story for Harper’s Magazine, “The Intelligence Factory,” appeared in the November 2009 issue.

lomat in New York City. Yet in announcing the arrest of Aref and Hossain, the FBI allowed that their crimes were “not real” and that the public had never actually been in jeopardy. The plot had been a sting operation wherein the FBI concocted the assassination plan and furnished the weapon. Though much

cerns, the FBI embarked on a kind of public-relations initiative by organizing a series of meetings with local leaders. At the meeting I went to with half a dozen activists, we were told we could take notes but not record the proceedings, though one of the attendees, in what she considered an act of civil disobedience, surreptitiously

taped them anyway. After some opening statements from FBI spokesman Paul Holstein, who told us that the point of the meeting was to prove that the FBI “did the right thing,” we watched a PowerPoint presentation that began with ominous chanting, which I found out later was an Islamic prayer song. The first image identified the sting operation by

its code name, Green Grail, and showed a photograph of the defendants with glowering expressions as guards led them in shackles from Albany’s federal courthouse.

Following the presentation, the agent in charge of the case, Tim Coll, explained how the FBI had built its investigation, which began shortly after the 9/11 attacks when one of the founders of Aref and Hossain’s



of the evidence against the two men remained classified, it was unclear that either man even knew he was involved in a terrorist plot.

When these details emerged, both Muslims and non-Muslims in Albany were outraged. The investigation had targeted two well-known members of the community, men with no prior criminal record and no history of violence. To allay the community’s con-

mosque, a man named Ali Yaghi, was “observed celebrating the 9/11 attacks on the streets.” Yaghi, though never charged with any terrorism-related crime, was arrested and deported soon after, but the mosque remained under surveillance. The FBI subsequently learned Aref had called a “hot” telephone that investigators believed was a possible Al Qaeda contact number in Syria, where Aref had once lived. Coll also recounted how in a “dumpster dive” conducted by agents in a separate case in Syracuse, Aref’s name had turned up in a letter that described him as a “loyal representative” of a group believed to have offshoots connected to Al Qaeda.

Over the course of the eight-month sting operation, beginning in July 2003, the government’s informant, posing as a wealthy Pakistani businessman, befriended Hossain, a pizzeria owner and father of six. The informant visited Hossain regularly, eventually offering to loan him \$50,000 to bolster his struggling business. FBI agents would later acknowledge that Hossain was nothing more than “a way to get in,” a means to catch Aref, who, in keeping with Islamic tradition, was brought in to witness the handover.

What made the deal illegal, according to prosecutors, occurred four months into the operation during a meeting in the informant’s office. Pulling back a tarp in his stockroom to reveal a shoulder-launched surface-to-air missile, the informant told Hossain, “I also do this business for my Muslim brothers.” Prosecutors claimed that Hossain should have been able to deduce that the loan he was receiving might be drawn from proceeds of an illegal weapons sale, and that by accepting the loan he had opened himself to charges of money laundering. Aref himself never saw

the weapon. During one of the exchanges of cash—all of which were documented on grainy black-and-white surveillance footage—the missile’s trigger system, which looked not unlike a staple gun, was visible on a table. Prosecutors alleged Aref had seen the trigger and thereby had entered the conspiracy to “assist in money-laundering.”

It’s difficult not to make the FBI’s

“not the case of the century.” Nevertheless, the Albany missile plot became one of the government’s more lauded victories in the fight against domestic terrorism—even though, by the government’s own acknowledgment, it involved no terrorists, no terrorism plot, and a missile provided by the FBI. When asked at a press conference following the sentencing whether there



case sound contrived in this recounting, but the agents I spoke with seemed to genuinely believe that Aref was a potential terrorist. Whatever the peculiarities of the plot they used to ensnare him, Aref was an extremist at heart. Their belief was supported by materials they’d found at his apartment after his arrest, including poetry he’d written with phrases like “raise the jihad sword,” in a diary he’d kept before coming to the United States, in which he also chronicled meetings with individuals who were known to have discussed attacking the United States.

At the time of Aref and Hossain’s arrest, U.S. Deputy Attorney General James Comey admitted it was

was anything connecting the defendants, particularly Aref, to terrorism, the prosecuting attorney answered, “Well, we didn’t have the evidence of that, but he had the ideology.”

In the months after 9/11, the FBI deployed its investigative apparatus as a blunt weapon. In November 2001, the Department of Justice began conducting “voluntary interviews” with 5,000 Middle Eastern non-citizens. Hundreds of FBI agents were dispatched across the country to conduct the interviews, with standard questions like “Are you aware of anybody who reacted in a surprising way about the terrorist attacks? Maybe you got to work

and maybe a coworker said, ‘Good, I’m glad that happened?’” At the same time, Attorney General John Ashcroft instituted a “Responsible Cooperators Program” that offered U.S. citizenship to undocumented and out-of-status immigrants who could provide useful information about the 9/11 attacks.

The Justice Department’s Office of the Inspector General later described the bureau’s efforts as “indiscriminate,” noting that “no distinction was generally made between the subjects of the lead and any other individuals encountered at the scene ‘incidentally.’” One paper told of five Arab-American Boy Scouts from Michigan detained with “fudge bags in hand” by FBI agents after they were spotted taking photographs while on a scenic ferry ride. Law enforcement detained more than 1,200 individuals, mostly men of Middle Eastern descent, on immigration or other low-level violations. Detainees were often held in solitary confinement, and under the DOJ’s “hold until cleared” policy they could be incarcerated indefinitely. The arrests were carried out largely in secret, protected from scrutiny by an order barring the press and the public from detention hearings to prevent “irreparable harm to public safety.”

These mass roundups, of course, echoed earlier moments in our history. In the run-up to World War I, President Woodrow Wilson decried the danger of “hyphenated Americans,” pointing specifically to Irish and German immigrants. During World War II, 110,000 Japanese Americans were interned without cause. These reactions were obviously hysterical, but were also temporary; the more recent emergency measures, however, have been insti-

¹When the Michigan chapter of the American Civil Liberties Union offered free legal counsel to the men being interviewed, the ACLU’s hotline was overwhelmed with vitriolic messages. “When are you going to concern yourself with Americans?” asked one caller to the ACLU’s office. “You seem to be more concerned about a bunch of people who would just as soon kill us as look at us.” Another caller, an African American, said she didn’t approve of racial profiling, “but this is different. I think the government should go door to door and question every one of these Arabs.”

tutionalized as a permanent law-enforcement priority. This new precedent began within days of 9/11 when, amid the finger-pointing over missed clues and intelligence failures, FBI director Robert Mueller issued a memo to his field offices describing a new policy of “forward-leaning—preventative—prosecutions.” Mueller wrote that “while every office will have different crime problems that will require varying levels of resources,” the FBI’s “one set of priorities” is to stop the next terrorist attack.

This memo, which detailed policies for “preemptive” operations, explains how, nearly a decade into our “war on terror,” Justice Department

ONE OF THE GOVERNMENT’S MORE LAUDED VICTORIES INVOLVED NO TERRORISTS, NO PLOT, AND A MISSILE PROVIDED BY THE FBI

officials can claim we’ve caught hundreds of people domestically whom we call terrorists, while at the same time, according to the DOJ’s own statistics, only one person—an Egyptian immigrant who opened fire on an El Al ticket line at Los Angeles International Airport in 2002—has actually committed an act of terrorism on American soil. Instead, the U.S. government has amassed more than 1,000 federal “terrorism-associated” prosecutions by expanding its investigative purview beyond actual attacks, or even “ticking time bomb” threats, to focus almost exclusively on a theoretically unlimited array of potential threats. To catch a successful terrorist under this system would constitute a failure of law enforcement, because the perpetrators would have already committed the act. Rather, these agents are seeking “pre-terrorists,” individuals whose intentions, rather than actions, constitute the primary threat.

The pursuit of hypothetical enemies has long been considered illegal in the international arena. (Recall, for example, the labeling of political dissidents as “intellectual terrorists”

under various CIA-backed regimes in Latin America during the 1970s.) But while such questions have been debated in relation to foreign interventions, the preemptive model of law enforcement has unfolded domestically with little dissent. The FBI’s own storied practice of spying on “subversive” Americans, including civil rights leaders, socialists, and antiwar protesters, was supposed to have ended in the 1970s with the disbandment of J. Edgar Hoover’s COINTELPRO. The Church Committee, which investigated domestic spying by the FBI and CIA after Watergate, found that during the fifteen years that COINTELPRO was active, the FBI “had conducted a sophisticated vigilante operation” that included “secret informants ... wiretaps, microphone ‘bugs,’ surreptitious mail opening, and break-ins.” After the committee’s report, Congress passed restrictions designed to prevent such “forward-leaning” investigations by putting a wall between intelligence gathering and law enforcement.²

The Patriot Act removed that wall, enhancing the FBI’s surveillance capabilities through new powers such as roving wiretaps, “sneak and peak” search warrants—which allow agents to search a suspected terrorist’s home without prior notice—and the expanded use of “national security letters,” which give agents access to personal records without requiring a court order. Where once the FBI’s chief work product, and a chief metric by which agents were judged, was arrests that could withstand the scrutiny of prosecution in federal court, a new set of metrics has been instituted to reflect an agency retrofitted as an intelligence-gathering organization. Evidence of this shift can be seen in FBI director Mueller’s periodic “accountability” videoconferences, known as “Strategy Performance Sessions,” which are patterned after the NYPD’s CompStat initiative.

²The revelation of illegal surveillance presented another practical problem for the FBI; court cases that relied on domestic spying for evidence were thrown out, including those against the Weathermen, who carried out dozens of bombings during the late 1960s and early 1970s.

Top officials in each FBI field office brief Mueller on a series of intelligence-driven “performance indicators,” such as the number of “sophisticated investigations” employing wiretaps or surveillance, the number of informants deployed in the field, and the number of terrorist threats disrupted. The FBI has also adopted the intelligence community’s practice of compiling raw field data into “information reports,” which are disseminated to law enforcement and are based on unvetted information that can amount to nothing more than speculation or rumor.

Whereas the new intelligence apparatus has increased the scope of the FBI’s work, other regulations have lowered the burden of proof necessary to launch an investigation. In 2008, the DOJ’s Guidelines for Domestic FBI Operations was revised under Attorney General Michael Mukasey. In this new version the FBI no longer has to demonstrate a “predicate” to an investigation, effectively giving the agency the power to spy on whomever it wishes, for however long it wishes, even if that individual has never committed a crime or, more important, is not even suspected of one. According to data released by the DOJ, in the first four months after these rules were instituted, agents launched 11,667 such low-level inquiries, known as “assessments.” (The Justice Department is currently working on another revision of the FBI’s internal guidelines, and the rules governing assessments are expected to be loosened further.)

Although the FBI’s operational rules explicitly ban profiling solely on the basis of race, they do not forbid using religion or national origin to target suspects. Agents can spy on anyone “reasonably believed to be associated with a particular criminal or terrorist element of an ethnic community,” to track “ethnic-oriented businesses and other facilities” if “members of certain terrorist organizations live within a certain concentrated community of the same ethnicity.” The Brennan Center for Justice at New York University’s law school summed up the practices by saying that the guidelines “envision

an FBI that vacuums up all the information made available to it by permissive investigative rules, disseminates the information to other government agencies, and retains it indefinitely.”

Yassin Aref, a Kurdish refugee from Iraq, was first interviewed by the FBI during their initial post-9/11 sweep. The agent’s notes from the meeting are unremarkable. Aref arrived in the United States in 1999 and was soon thereafter hired as the imam of the Central Avenue mosque, where he earned \$500 a week. Still, after the interview agents kept an eye on Aref’s mosque, installing cameras aimed at the front and rear entrances. (When I asked Tim Coll whether he had also bugged the mosque, his face turned red and he wouldn’t answer.)

Aref was interviewed again in April 2003, when, in the first weeks of the Iraq invasion, the FBI began to question some 11,000 individuals who had ties to the country. In this meeting, the two agents spoke with him at greater length, and he told them how he and his wife had fled Iraq in 1995 to escape the persecution of the Ba’athist regime. According to one of the investigating agents’ notes, Aref offered that “the FBI could keep a close eye on him and watch everything he does,” and that “due to his lack of familiarity with the American language and legal system,” he asked that the FBI “let him know if he does or says anything illegal or wrong.”

In the spring of 2003, U.S. forces raided suspected insurgent camps throughout Iraq. Soldiers found Aref’s name and Albany phone number in the course of three such raids, including one outside the town of Rawah at what was believed to be a training camp for the extremist group Ansar-al-Islam, where his name turned up amid “pocket litter” scattered on the ground at the site. Next to his name was a word that U.S. military intelligence officers translated as the Arabic term for “commander.” Shortly after the raid, the FBI launched its sting operation.

To get closer to Aref, the FBI turned to an Albany man they’d arrested more than a year earlier: Shahed Hussain, a Pakistani immigrant who went

by the nickname Malik and who had been busted helping immigrants fraudulently obtain driver’s licenses, feeding them answers on the test while working as their translator. Malik was facing prison time and possible deportation to Pakistan, where, Coll believed, he was wanted for rape or murder. So Malik was receptive when the FBI offered him a cooperation deal. Coll explained that Malik’s mission, in exchange for “consideration” at his sentencing, was to root out possible terrorist threats. “I told him that he has to produce,” Coll said. “I explained it’s like playing pinball. Keep scoring as many points as you can without people knowing your identity.”

Malik first approached Mohammed Hossain at his pizzeria, presenting himself as a wealthy businessman in need of spiritual counseling. For months he met with Hossain, bringing toys for Hossain’s children and talking about his own religious education. The conversations frequently turned to politics, but Hossain proved not to have extremist leanings. Typical of these exchanges, Malik asked Hossain about the World Trade Center attacks. “Was it good or bad?” Malik asked, and Hossain answered, “Of course, this was bad.” When asked how he defined the word “jihad,” Hossain answered, “You stopped all your considerable worldly business to come here and engage in a few words about God. This is called jihad.” But he proved more pliable on the issue of money, admitting to Malik that he was having “a little bit” of cash-flow trouble on a couple of rental properties he owned. At the behest of the FBI, Malik offered Hossain a loan.

In November 2003, five months into the operation, Malik showed Hossain the missile. In the FBI’s surveillance footage, Malik can be heard describing his business importing merchandise from China. He then tells Hossain, almost offhandedly, that “we also import weapons.” He draws back the tarp to reveal the missile and asks Hossain whether he knows what it is. “No,” says Hossain. Malik tells him, “This is for destroying airplanes.” Hossain says, “But it’s not legal.” Malik laughs, “What is legal in the world?”

The link to Aref was a stroke of

luck for the FBI. Hossain himself suggested the imam be brought in to witness the loan, which was made in installments. The handovers of cash were themselves prosaic, but Malik soon turned to the young imam for spiritual guidance, and the two began meeting, occasionally sitting at a local Dunkin' Donuts, where Malik increasingly brought up controversial topics. Aref didn't speak Malik's native Urdu, so the two conversed in broken English. The prosecution would later point to a handful of conversations incriminating Aref, including one at his house in February 2004 during which Malik mentioned that Aref and Hossain should not go to New York City the following week because there would be a missile attack. The transcript of this, the most damning conversation in the eight-month sting, is not available because Malik's hidden tape recorder supposedly fell off him. Nevertheless, according to the FBI, Aref responded by asking Malik to leave his home. Aref later claimed that he thought Malik was joking and warned him not to make such comments, which prosecutors said meant that Aref was aware of the missile conspiracy. Several months later, Malik once again discussed his other business in front of Aref and made references to New York, but he referred to the missile by the code word "chaudry," which Malik never explained to Aref. During that same conversation, Malik mentioned that he was afraid he'd have to hide out from the FBI. Aref said that he had no such qualms

because he wasn't doing anything wrong.

Informants have been deployed by law enforcement for centuries, but in these recent terrorism investigations they have been given a more active role in shaping cases, often encouraging or even coercing individuals to commit violent acts toward which the individuals have otherwise shown no predisposition. Such sting operations present a disturbing kind of theater: the government provides the script, the arms, the cash, and other props, and offers logistical support.

In at least one instance, in Chicago last year, the FBI instructed infor-

ants to pay a suspect so he could quit his day job and focus on jihad. In the case of Hemant Lakhani, a British businessman who was convicted in 2005 of providing material support to terrorists for brokering the sale of a surface-to-air missile, law enforcement ended up on both sides of the arms deal, as buyer and seller, after the informant discovered that Lakhani simply didn't have the connections to procure the missile. The informant in that case, pivotal in shepherding Lakhani through the sale, had previously worked with the DEA, but after he incriminated an innocent man in the course of a drug sting, his handler had given him the equivalent of a "burn notice." In the desperate post-9/11 environment, the FBI hired him anyway.

Other informants have had equally dubious qualifications. The informant in a 2007 plot to blow up jet fuel tanks at JFK Airport was a former New York drug kingpin who had conspired to murder a rival dealer and been busted with \$2 million in cocaine. The Miami Seven, arrested in 2006 for plotting an attack on the Sears Tower in Chicago, had their plot concocted for them entirely by a pair of FBI informants, one of whom had a history of assault; the other sneaked tokes off-camera during the surveilled meetings. In 2004 an informant was deployed against a Yemeni sheikh in Brooklyn, but after becoming disgruntled when the FBI's promises of riches never came to fruition, he set himself on fire in front of the White House in protest.

Informants in some cases have been so heavy-handed that they were dismissed by the people they targeted. At a California mosque last year an informant talked about jihad so aggressively that the mosque's members took out a restraining order to have him barred from the premises. (The informant, Craig Monteilh, who was paid \$177,000 for fifteen months of service, was later convicted of grand larceny in an unrelated incident and subsequently sued the FBI, alleging that the agency had revealed his informant status, leading to an attack by a fellow prisoner during his incarceration.)

The informants in these sting operations were deployed to supply not just opportunities for criminal acts but also the inflammatory rhetoric that would justify terrorism charges. In a supposed plot to attack the United States Army Base in Fort Dix, New Jersey, the FBI sent two informants to infiltrate a group of suspected terrorists after a nearby Circuit City reported a suspicious video the five men had brought in to be copied. (The tape showed footage of what the men later claimed was a vacation in the Poconos, where they can be seen riding horseback, snowmobiling, and firing guns at a rifle range, while shouting "Allahu Akbar." The government would later claim that this was a training mission.)

During the fifteen-month sting operation that followed, one of the informants urged the suspects to join their Muslim brothers overseas. "Don't you want to go and die with them, man?" he said. The other, Mahmoud Omar, an Egyptian who had agreed to work for the FBI after facing deportation for a bank-fraud conviction, initially suggested the plot to kill American soldiers at the army base. Omar told the men that if they appointed him as their leader he would be the "brain" of the operation. It was Omar who got them talking about the use of Molotov cocktails, grenade launchers, remote-controlled detonators, and roadside nail bombs. They also discussed purchasing a house near the base as a sniper station, but when the men failed to follow through with the plans, Omar grew frustrated. "You talk, but you don't do nothing," he told one of the suspects. The five men were arrested before they could devise a specific plan or set a date for the attack. Four of the defendants received life sentences, and the fifth was sentenced to thirty-three years in prison.

John Pikus, the agent who ran Albany's branch during Aref and Hossain's trial (and has since retired), told me that given the intelligence the agency had at the time, they believed Aref was "a bad person." When I pressed him on whether he felt his informant had ultimately flushed out a terrorist, he hedged. "Well, you're not going to get me to say he was absolutely guilty," he told me. Still, Pikus insisted that the FBI had to pursue the sting

against Aref. Otherwise, he said, “he would have walked around with an intelligence case on him forever.”

In August 2004, Aref was arrested on his way home from evening prayers at the Central Avenue mosque. Hossain was plucked from his car by heavily armed agents. Later that same night the FBI conducted searches of both men’s homes and of the mosque, where they wore sterile white booties over their shoes out of respect for Islamic custom. They found nothing notable at the mosque, but at Aref’s house they discovered his diary with the poetry about raising the “jihad sword.” Agents also found the phrase “plan in America” in the diary, along with lists of meetings with individuals including one with Mullah Krekar, who had been a leader in the Islamic Movement for Kurdistan, where Aref had worked while living as a refugee in Syria. Coll told me the agents felt “vindicated” at the find.

Not long into the discovery process, however, lawyers for Aref and Hossain found a stunning mistake in the evidence arrayed against their clients: the word on the mysterious scrap of paper retrieved in Rawah, which had been key to launching the investigation, had been misunderstood by U.S. intelligence. The word *kak*, translated as the Arabic for “commander,” was in fact Kurdish for “brother.” After this mix-up came to light, prosecutors sought top-secret protection for other documents in the case, while also refusing to confirm, even to the presiding judge, that any additional classified material existed. Prosecutors also demanded that defense attorneys review evidence only in the presence of a Justice Department specialist, a request the judge eventually denied. “I think they are trying to render meaningless the right to counsel, the right to present a defense,” Aref’s attorney, Terence Kindlon, told the *New York Law Journal*.

Hossain’s lead attorney, Kevin Luibrand, who had been a U.S. Army captain and worked in the JAG Corps at Walter Reed Army Medical Center, where he had top-secret security clearance, told me he was forced to undergo

an eight-month security check before he could view any classified evidence. Between the intelligence gathered overseas and the months of domestic surveillance, the attorneys believed the prosecution possessed more incriminating information than the defense had yet to see. “They kept making it sound like they had all these supersecret documents,” said Luibrand. The day he and Kindlon were finally granted clearance, they headed to two secure evidence rooms at the federal courthouse in Albany that had been set up specifically for their use. “A key was given to me, and a key was given to Kindlon. There was a safe in each room,” Luibrand told me. “We expected to view voluminous documents. Instead, there was one piece of paper in the safe, and it had nothing to do with my guy.” The single document that they’d been shown, which remains classified, was never presented in court.

With the evidence they did have, the defense teams were faced with the task of proving that the seemingly damning intelligence gathered against their clients was not what the FBI thought it was. The prosecution argued that “cryptic notes” from Aref’s diary suggested he was an agent of the Islamic Movement of Kurdistan sent to the United States by one of its leaders, Krekar, a wanted terrorist, in order to carry out a “plan in America.” But the United States had classified Krekar as a terrorist only in 2003, after he founded Ansar al-Islam, a radical offshoot of the IMK. Aref left Syria in 1999, when the IMK was still considered a U.S. ally. At the time Aref worked there, the group supported the U.S. effort to overthrow Saddam Hussein, and the group’s primary goal was to establish an independent Kurdish state. When the defense finally got their hands on the diary, over a year into the case, they discovered that the “plan in America,” was a mistranslation of “America’s plan,” which additional diary entries made clear was actually the U.S. effort to topple Saddam’s regime.

When I later met with the lead prosecutor in the case, William Pericak, I asked about the diary translation, and about the other intelligence the government had, like Aref’s numerous phone calls from Albany to the IMK offices in Syria, which the

government found suspicious but Aref said were his only way to get news about his friends and family back in Kurdistan. “I’m the first to say that any individual piece of information here is capable of innocent explanation,” Pericak told me. “It’s also capable of very sinister inference.”

At the trial, Pericak showed no such ambivalence, though he made clear to the jury that “we are not proving that Mr. Aref is a terrorist,” only that Aref “intended to help Malik disguise where the money came from.” (During the proceedings, the rooftop of the federal courthouse was lined with sharpshooters, a precaution that could not but give jurors the impression that the men on trial were very dangerous.)

Just as the law-enforcement community has been retrofitted with enhanced intelligence-gathering capabilities, the prosecution of terrorism cases in the federal courts has been subject to a series of new security measures reminiscent of those employed against enemy combatants in military tribunals. The government regularly asks for and receives sweeping protective orders that bar from public view even benign information like high school transcripts. The Classified Information Procedures Act, whose original intent was to keep witnesses from exposing government secrets in court, is now used to shield “sensitive” information not only from defendants and their counsel but sometimes from the prosecution as well. Syed Hashmi, a U.S. citizen, pleaded guilty to knowingly hosting an Al Qaeda operative at his apartment. His attorney, Sean Maher, told me that the expansive security restrictions placed on evidence make it difficult for defendants like Hashmi to assist in their own defense. As an example—which, because of those same restrictions, he could not confirm actually applied to Hashmi—he said a defense attorney could be prevented from showing his client something as basic as photos of a potential witness.

The use of secret intelligence gathered both domestically and overseas to build cases also allows for the possibility that the evidence may have been elicited under torture. In 2005, jurors were shown a

videotaped confession during the trial of Abu Ali, a U.S. citizen accused of plotting to assassinate President Bush. Ali's confession was extracted by Saudi Arabian secret police, who, his lawyer claimed, whipped him and threatened him with dismemberment over the course of forty-seven days of interrogation. Defense attorneys were not permitted to present evidence that supported the allegations of torture during the trial because of national-security restrictions. In a statement that seems more applicable to the courts of Iran or Syria, Amnesty International declared that such an omission had "cast a dark shadow over the fairness of the trial."

Despite these troubling cases, the domestic prosecution of terrorists has largely managed to avoid the censure that has befallen the United States' international "war on terror," with its "enhanced interrogations" of prisoners overseas and other human rights violations. Instead, the number of domestic terror cases is likely to grow, especially as more Guantánamo detainees are tried in the United States, where, at least theoretically, defendants will enjoy due process and impartial judgment.

A racketeer, writes the historian Charles Tilly, is one who "creates a threat and then charges for its reduction." When governments, which Tilly describes as "specialists in coercion," create threats and then offer citizens protection from those threats, the state is running a protection racket. The prosecutions that have emerged under the preemptive model evince just such a quality. Through these conjured threats, the public is treated to a simulation of a real terrorist attack, yet at each post-arrest press conference is reassured that the police were there every step of the way, and that, as was made clear in the Albany case, "there was never any danger."

In December of last year, Attorney General Eric Holder spoke before a gathering of Muslim leaders and described preemptive operations as an "essential law-enforcement tool." He made, he said, "no apologies for how the FBI agents handled their work."

Yet while these cases certainly demonstrate that the right enticements can persuade some individuals to break the law, there's little evidence that they make us safer. On the contrary, in every instance since 9/11 when an actual terrorist attack has been attempted, it failed not because of enhanced law-enforcement initiatives but as a result of the perpetrator's incompetence. The 2002 "Shoe Bomber," Richard Reid, was thwarted by an alert stewardess in his attempt to light homemade explosives hidden in his sneakers midway through a flight from Paris to Miami; the 2009 "Underwear Bomber," Umar Farouk Abdulmutallab, failed to ignite the plastic explosives sewn into his underwear, in the end only scorching himself; and the 2010 "Times Square Bomber" Faisal Shahzad's homemade explosive device, left in the back of a parked SUV, simply didn't detonate.

The fortunate inability of these individuals to carry out their attacks was interpreted not as a failure of law enforcement but as evidence of a need for further increases in security, surveillance, and intelligence-gathering authority. Although Shahzad was questioned under the existing "public safety exception" to the *Miranda* rule (and, according to the FBI, continued to cooperate after being read his rights), lawmakers, led by Senator Joseph Lieberman, used his arrest to call for the suspension of *Miranda* warnings for all terrorism suspects.

The terrorism-protection racket, however, has not troubled most Americans, in part because it has been leveled almost entirely against the nation's already marginalized Muslim population. This is no accident, given that for the past decade the "war on terror" has been marketed as a fight against radical Islam. Despite the Obama Administration's assertions that it is not targeting Muslims, and despite cosmetic changes to the official language with which terrorist threats are discussed by the government—the National Counterterrorism Center, for example, urges law enforcement to "avoid labeling everything 'Muslim'"—the current administration has not only maintained the previous administration's policies but has, in fact, institutional-

ized and expanded them. The pace of informant-led stings has picked up, with alleged "pre-terrorists" ensnared in Oregon, Texas, and Washington, D.C., in recent months. In a revealing moment before a congressional Homeland Security committee last September, FBI director Mueller, one of the few holdovers from the Bush presidency, admitted that terrorism in the United States is really a Muslim problem, saying that his "message to the Muslim community is, the worst thing that could happen to the Muslim community is another attack."

Even as the FBI focuses on stopping attacks perpetrated by radical Muslims, law enforcement has avoided branding violence from other extremist groups as terrorism. Members of the Hutaree Christian militia, who were arrested in March 2010 for plotting to kill police officers with explosives, were never referred to by the FBI as terrorists, despite being indicted on charges almost identical to those brought against the Times Square bomber. According to a recent *Washington Post* article, Homeland Security all but stopped investigating violent radicalization threats unrelated to Islam in 2009, after a Homeland Security report on right-wing extremism, which concluded that "white supremacist lone wolves posed the most significant domestic terrorist threats," drew the ire of conservative groups. The agency responded to the criticism by gutting the office that analyzed domestic extremism. This year, Representative Peter King of New York, chairman of the House Homeland Security Committee, held hearings on the "radicalization" of American Muslims, rejecting requests from fellow lawmakers to include other types of homegrown threats, this despite the fact that since 2001, more American deaths have been caused by non-Muslim extremists than by Muslims.

And while right-wing radicals and white supremacists have been given less attention, the Homeland Security apparatus has been wielded in full force against others deemed enemies of the state, particularly those who undermine the interests of Congress's chief lobbyists. The expanding category of national-security threats includes animal- and

environmental-rights activists as well as left-leaning political protesters, whether antiglobalist, anticapitalist, or antiwar. Enhanced surveillance and wiretapping powers initially passed under the Patriot Act can now be used against citizens who are merely “suspected of associating with radical activists.” So, for example, an NGO whose offices were raided last year by the FBI in connection with a “domestic terrorism” investigation turned out to be working on a humanitarian mission to Palestine, where, unbeknownst to the activists, they’d been accompanied by an undercover FBI agent. And, as the *New York Times* recently reported, the FBI targeted a self-described anarchist, Scott Crow, in Austin, Texas, who was reportedly attending meetings at which environmental issues were discussed. “Al Qaeda and real terrorists are hard to find,” mused Crow. “We’re easy to find.”

The Animal Enterprise Terrorism Act, passed in 2006, expanded the scope of “domestic terrorism” to include any “interference” with such entities as medical researchers, grocery stores, zoos, and clothing stores. The measure, which was promoted by lobbyists working for the biomedical industry, covers, along with acts of vandalism, virtually anything that can affect a company’s bottom line. Another bill, the Violent Radicalization and Homegrown Terrorism Act, introduced in 2007 and passed in the House but not the Senate, called for a national commission to investigate potential domestic extremism. The bill was reportedly ghostwritten by the RAND Corporation, which had previously warned that the danger of “homegrown terrorism” is not merely from jihadist sleeper cells but from “anti-globalists” and “radical environmentalists” who “challenge the intrinsic qualities of capitalism.”

One of the outcomes of these preemptive policies has been an unprecedented integration of all levels of law enforcement. Beginning in 2003, the Department of Homeland Security established a nationwide network of “fusion centers,” staffed by a combination of federal, state, and local law enforcement, which act as intelligence-data repositories. Under

the rubric of “intelligence-led policing,” these centers are intended to bring the beat cop to the front lines of domestic intelligence-gathering. The fusion centers represent a consolidation of data-gathering on American citizens. While the intent is ostensibly to disrupt another terrorist attack, the majority of resources have been devoted to solving common crimes. According to statistics reported by the federal courts, the Patriot Act’s “sneak and peek” warrants were issued 2,332 times between October 2006 and October 2009. Only 1 percent of sneak-and-peeks were used in terrorism-related cases; 69 percent were for drug-related investigations.

The chief work products in this effort are Suspicious Activity Reports, whereby local law-enforcement agencies catalog certain “observed behaviors” that presume to make suspects of us all. At a congressional hearing last year, Department of Homeland Security secretary Janet Napolitano said she hoped that by the end of the year the SARs, which are already in use in twenty-nine cities, would be implemented nationwide. The Los Angeles Police Department was the first to introduce SARs. Among the “suspicious activities” listed on its website are joggers stretching “for an inordinate amount of time” and people carrying on “long conversations on pay or cellular phones.”

After the federal court in Albany sentenced Yassin Aref and Mohammed Hossain to fifteen years in prison, the city’s Muslim community was so outraged that the FBI moved Malik, the informant, to an undisclosed location. In January 2010 various Muslim community listservs circulated a photo and video of Malik in an email titled “Vid & Pic of snitch,” which included a warning that he was not to be trusted. A few months later the Albany city council passed a resolution urging the DOJ to review its policies on “preemptive prosecutions” of terrorism cases, saying that they unfairly targeted Muslims. But by then it was too late. In June 2008, Malik had been dispatched to a mosque in nearby Newburgh, New York, where

he befriended an ex-convict named James Cromitie, who had converted to Islam in prison. Over a period of several months, posing again as a wealthy Pakistani businessman, but this time named Maqsood, Malik treated Cromitie to free meals and offered him a BMW while drawing his attention to a plan to attack two synagogues in the Bronx. Malik promised Cromitie \$250,000 if they pulled off the scheme. The government had again devised the plot and again provided the incriminating material, designing and constructing a fake bomb complete with inert explosives and hundreds of ball bearings.

In announcing the arrest of the Newburgh Four in May 2009, the police once again assured the public that the operation had been “fully controlled at all times.” For much of the sting, it was unclear whether Cromitie, who worked the night shift at Walmart, was serious about engaging in terrorism or was just desperate for cash. On one occasion, Cromitie was taped asking Malik for money to buy groceries. When Malik gave him a camera to photograph potential bomb targets, Cromitie immediately sold it to a neighbor for \$50. The remaining defendants, whom Cromitie recruited a month before the bombing was to take place, included a schizophrenic who lived in a crack house, surrounded by bottles of his own urine. Another said Malik promised to give him money to help his uncle pay for a liver transplant.

At the trial in August 2010 that found all four men guilty of attempting to use weapons of mass destruction, the presiding judge, who had referred to the proceedings as the “un-terrorism case,” described the government’s behavior in creating the crime as “decidedly troubling.” Indeed, the plot was so staged that the police had blocked off the street where the bust would take place. When they pulled over the defendants’ car moments after they had placed the two fake bombs outside synagogues in the Bronx, the FBI found Malik right where they’d scripted him to be: at the wheel of the getaway car. ■