

A JUSTICE report

FROM ARREST TO CHARGE IN 48 HOURS

Complex terrorism cases in the US since 9/11



50 years of defending the rule of law



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Complex terrorism cases in the US since 9/11**

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Contents

Executive summary	3
Acknowledgements	4
Introduction	5
The US law on pre-charge detention	7
The Portland Cell (2002)	9
The Lackawanna Six (2002)	11
The Virginia jihad network (2003)	13
Brooklyn Bridge plot (2003)	15
Columbus shopping mall plot (2004)	16
New York subway station plot (2004)	18
Toledo plot (2006)	19
Sears Tower/FBI Miami plot (2006)	20
Fort Dix army base plot (2007)	21
JFK Airport plot (2007)	22
Conclusion	24
Appendix: The grand jury system	26
Table: Dates of arrest and charge of suspects	28

Executive summary

- Under the Fourth Amendment of the US Bill of Rights, the maximum period of pre-charge detention in criminal cases is 48 hours.
- Despite the US government's resort to a wide range of exceptional measures since 9/11, including the use of indefinite detention in Guantanamo Bay, warrantless wiretapping, extraordinary rendition, and so-called 'enhanced interrogation' techniques, this core constitutional guarantee has remained unchanged.
- This report details ten of the most high-profile terrorism cases since 9/11 in which the FBI, together with state and local police, arrested over 50 suspects in alleged plots aimed at causing widespread loss of life, including the destruction of such key US landmarks as the Sears Tower and the Brooklyn Bridge.
- Details from each case show that police in the US encounter identical difficulties investigating terrorism cases as police in the UK do. These include the declared intention of terrorist groups to cause mass casualties with no warning; the pressure upon law enforcement to intervene early to protect the public; the increasing amount of material seized for the purposes of investigations; and the presence of international links.
- Nonetheless, in all ten alleged terror plots between 2002 and 2007, each suspect was charged with a criminal offence within 48 hours of their arrest.
- Indeed, in a majority of cases, suspects were charged *prior* to being arrested due to the use of indictments by federal grand juries (abolished in England and Wales in 1933).
- The key difference between UK and US terrorism investigations appears to be the constitutional guarantee of due process in the latter and the extensive reliance by its police and prosecutors upon intercept evidence in prosecuting suspected terrorists.
- No western democracy faces a greater threat of terrorism than the US. Despite this, the proven ability of US law enforcement to charge suspects in complex terror plots within 48 hours of arrest without resort to exceptional measures shows that UK proposals to extend pre-charge detention are both unjustified and unnecessary.

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This report was written by Dr Eric Metcalfe, JUSTICE's director of human rights policy, and researched by Emer Murphy, JUSTICE policy intern.

Introduction

Since the terrorist attacks of 11 September 2001 in New York, Washington DC and Pennsylvania, the United States government has adopted a number of sweeping counter-terrorism measures, including indefinite detention in Guantanamo Bay,¹ the extraordinary rendition of suspects to countries known to practice torture,² the waterboarding of suspects and other so-called 'enhanced interrogation' techniques,³ the PATRIOT Act 2001⁴ and the extensive interception of private communications without a warrant in breach of the established federal framework.⁵

These are but some of the measures that have been justly criticised for violating fundamental rights. For human rights and the rule of law are fundamental values that must be protected even, indeed especially, in times of crisis.⁶

The United Kingdom too has had its own share of exceptional measures breaching basic rights, from the indefinite detention of foreign terror suspects in Belmarsh,⁷ the use of control orders,⁸ to – most recently – proposals to extend what is already the longest period of pre-charge detention of any

¹ See e.g. Amnesty International, *Abandon Military Commissions, Close Guantanamo* (4 July 2007); UN report on situation of detainees at Guantanamo, E/CN.4/2006/120 (15 February 2006); Lord Steyn, FA Mann Lecture, 25 November 2003; Metcalfe, 'Inequality of Arms: The right to a fair trial at Guantanamo Bay' [2003] 8 EHRLR 573-584; Human Rights Watch, Background Paper on Geneva Conventions and Persons Held by U.S. Forces (29 January 2002).

² See e.g. Council of Europe Parliamentary Assembly, *Secret detentions and illegal transfers of detainees involving Council of Europe member states: second report* (7 June 2007); *Report of the Events Relating to Maher Arar*, Commission of Inquiry into the Actions of Canadian Officials in Relation to Maher Arar (2006); UK Security and Intelligence Committee, *Rendition* (July 2007); 'CIA holds terror suspects in secret prisons' by Dana Priest, *Washington Post*, 2 November 2005.

³ See e.g. Greenberg (ed) *The Torture Papers: The Road to Abu Ghraib* (Cambridge University Press, 2005); Waldron, 'Torture and Positive Law: Jurisprudence for the White House', (2005) 105 *Columbia Law Review* 1681-1750; 'Justice Dept Memo Says Torture 'May Be Justified'' by Dana Priest, *Washington Post*, 13 June 2004; 'Torture at Abu Ghraib' by Seymour Hersch, *The New Yorker*, 10 May 2004.

⁴ Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Pub. L. 107-56, 115 Stat. 272 (2001).

⁵ See e.g. 'Court Bars Secret Papers in Eavesdropping Case' by Eric Lichtblau, *New York Times*, 17 November 2007; 'Judge Rules Against Wiretaps, NSA program called unconstitutional' by Dan Eggen and Dafna Linzer, *Washington Post*, 18 August 2006; 'Bush let US spy on callers without courts' by James Risen and Eric Lichtblau, *New York Times*, 16 December 2005.

⁶ See e.g. ICJ Declaration on Upholding Human Rights and the Rule of Law in Combating Terrorism (adopted 28 August 2004).

⁷ Part 4 of the Anti-Terrorism Crime and Security Act 2001, which was held to be incompatible with Arts 5 and 14 ECHR in the judgment of the House of Lords in *A and others v Secretary of State for the Home Department* [2004] UKHL 56.

⁸ Prevention of Terrorism Act 2005. In *Secretary of State for the Home Department v JJ and others* [2007] UKHL 45 and *MB v Secretary of State for the Home Department* [2007] UKHL 46, a majority of the House of Lords found particular control order restrictions and the withholding of closed material from defendants in control order proceedings to breach Arts 5 and 6 ECHR respectively.

western democracy still further.⁹ JUSTICE has long argued against the unjustified extension of pre-charge detention in terrorism cases.¹⁰ Nonetheless, the government, supported by senior police, have continued to insist that further extension of pre-charge detention – beyond even the current maximum of 28 days – is necessary.¹¹

This report does not rehearse our arguments against pre-charge detention. Instead it examines a neglected aspect of the current debate: the experience of US law enforcement in investigating and prosecuting alleged complex terror plots within a constitutional framework that, despite the many apparent breaches of the rule of law by the current administration since 9/11, continues to require that all suspects be charged within 48 hours of their arrest.

This comparison between the US and the UK is particularly important for three reasons. First, the US and the UK share an inheritance of common law values, including habeas corpus, due process, and the right to a fair trial before a jury of one's peers. Indeed, US criminal law and procedure draws very heavily on English common law making comparison far more straightforward than the government's frequent comparisons with pre-charge detention in such continental legal systems as France or Spain.

Secondly, despite the attacks in London and Madrid since 9/11, the United States remains the foremost target for Al Qaeda related terrorism.¹² Although the threat to the UK is significant, US authorities are under correspondingly greater pressure than their British counterparts to detect and prevent terrorist attacks. Accordingly, the experience of US police and prosecutors with tackling terror plots is surely relevant to the UK debate.

Thirdly, it is clear that the complexity of alleged terror plots cause the same investigative difficulties for US authorities as they do for UK police. As this report details, the same factors cited by the UK government to justify extending pre-charge detention can be identified in US investigations. These

⁹ See e.g. Liberty, *Terrorism Pre-Charge Detention Comparative Study* (November 2007); Foreign and Commonwealth Office, *Counter-Terrorism Legislation and Practice: A Survey of Selected Countries* (2005).

¹⁰ See e.g. JUSTICE *The Future of Counter-Terrorism and Human Rights* (October 2007); JUSTICE submissions to the Home Affairs Committee on Counter-Terrorism Proposals (September 2007 and July 2007); JUSTICE Briefing on the Terrorism Bill for second reading in the House of Commons (October 2005); JUSTICE Briefing on the Terrorism Bill for second reading in the House of Commons; JUSTICE letter to Home Secretary Charles Clarke on 27 July 2005 (opposing 90 days pre-charge detention).

¹¹ See e.g. 'Brown faces rebellion over 58-day detention', *Daily Telegraph*, 15 November 2007; Home Office, *Options for pre-charge detention in terrorism cases* (July 2007).

¹² See e.g. 'Target Europe' by Jason Burke, *The Observer*, 9 September 2007, quoting an unnamed intelligence source saying 'America remains the number one target, but is hard to hit. If they could get on a plane and arrive in Cincinnati, they would. But they can't, so Europe is the next best option'.

include the declared intention of terrorist groups to cause mass casualties with no warning; the intent to acquire and use chemical, biological and even nuclear weapons; the pressure upon law enforcement to intervene early to protect the public; the use of false identities by suspects; the increasing amount of material seized for the purposes of investigations; and the presence of international links.

This report therefore details ten high-profile terrorism cases in the US between 2002 and 2007 in which the FBI, together with state and local police, arrested suspects in alleged plots aimed at causing widespread loss of life, including the destruction of such key US landmarks as the Sears Tower and the Brooklyn Bridge. All ten cases involved suspects either being charged within 48 hours of their arrest or, in several cases, charged prior to their arrest using indictments returned by federal grand juries.¹³

The US law on pre-charge detention

Under federal law, no person can be held for more than 48 hours following arrest without judicial determination that there is probable cause to charge him with a crime. The Fourth Amendment to the US Constitution provides that:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

In the criminal law context, this means that any arrest ('seizure') may only take place where there is 'probable cause' that a suspect has committed a criminal offence. In the case of *Gerstein v Pugh*,¹⁴ the US Supreme Court held that 'the Fourth Amendment requires a *judicial determination* of probable cause as a prerequisite to extended restraint of liberty following arrest'.¹⁵ Moreover, this determination must be made 'either before or *promptly* after arrest'.¹⁶ The Court in *Gerstein* explained the protection of the Fourth Amendment by reference to the English common law:¹⁷

¹³ See Appendix.

¹⁴ 420 U.S. 103 (1975).

¹⁵ *Ibid*, 114, emphasis added. In particular, the Court noted that 'the consequences of prolonged detention may be more serious than the interference occasioned by arrest. Pretrial confinement may imperil the suspect's job, interrupt his source of income, and impair his family relationships'.

¹⁶ *Ibid*, 125, emphasis added.

¹⁷ *Ibid*, 114-116.

At common law it was customary, if not obligatory, for an arrested person to be brought before a justice of the peace shortly after arrest. 2 M. Hale, *Pleas of the Crown* 77, 81, 95, 121 (1736); 2 W. Hawkins, *Pleas of the Crown* 116-117 (4th ed. 1762) The justice of the peace would 'examine' the prisoner and the witnesses to determine whether there was reason to believe the prisoner had committed a crime. If there was, the suspect would be committed to jail or bailed pending trial. If not, he would be discharged from custody. 1 M. Hale, *supra*, at 583-586; 2 W. Hawkins, *supra*, at 116-119; 1 J. Stephen, *History of the Criminal Law of England* 233 (1883) This practice furnished the model for criminal procedure in America immediately following the adoption of the Fourth Amendment ... and there are indications that the Framers of the Bill of Rights regarded it as a model for a 'reasonable' seizure.

In the 1991 case of *County of Riverside v McLaughlin*,¹⁸ the Supreme Court revisited its earlier ruling in the case of *Gerstein* and held that 'promptly' meant that, as a general rule,¹⁹ a suspect must be brought before a judge within 48 hours for a determination of probable cause.²⁰ In his dissenting judgment arguing for a 24-hour limit, Justice Scalia also noted that pre-charge detention under UK terrorism legislation differed dramatically from the traditional requirements of English common law:²¹

Some Western democracies currently permit the Executive a period of detention without impartially adjudicated cause. In England, for example, the Prevention of Terrorism Act 1989, 14(4), 5, permits suspects to be held without presentation and without charge for seven days It was the purpose of the Fourth Amendment to put this matter beyond time, place and

¹⁸ 500 U.S. 44 (1991).

¹⁹ The Court was careful to avoid expressing the 48 hour limit as definitive in every case. On the one hand, it allowed that a certain degree of flexibility was necessary to have regard to such difficulties such as 'often unavoidable delays in transporting arrested persons from one facility to another, handling late-night bookings where no magistrate is readily available, obtaining the presence of an arresting officer who may be busy processing other suspects or securing the premises of an arrest, and other practical realities', including the possibility of 'a bona fide emergency or other extraordinary circumstance' (*ibid*, 57). On the other hand, the Court was careful to stress that compliance with the 48 hour limit was not conclusive: a case does not pass 'constitutional muster simply because it is provided within 48 hours. Such a hearing may nonetheless violate *Gerstein* if the arrested individual can prove that his or her probable cause determination was delayed unreasonably. Examples of unreasonable delay are delays for the purpose of gathering additional evidence to justify the arrest, a delay motivated by ill-will against the arrested individual, or delay for delay's sake' (*ibid*, 56).

²⁰ See *ibid*, 56: 'Our task in this case is to articulate more clearly the boundaries of what is permissible under the Fourth Amendment. Although we hesitate to announce that the Constitution compels a specific time limit, it is important to provide some degree of certainty so that States and counties may establish procedures with confidence that they fall within constitutional bounds. Taking into account the competing interests articulated in *Gerstein*, we believe that a jurisdiction that provides judicial determinations of probable cause within 48 hours of arrest will, as a general matter, comply with the promptness requirement of *Gerstein*'.

²¹ *Ibid*, 65-66 (Scalia J, dissenting), emphasis added.

judicial predilection, *incorporating the traditional common law guarantees against unlawful arrest.*

In addition to the requirements of the Fourth Amendment, the Federal Rules of Criminal Procedure (which apply to anyone arrested on federal charges) have been interpreted by the US federal courts as requiring suspects to be brought before a judge within 24 hours.²² The Federal Rules similarly make explicit the requirement that suspects must be notified of the charges against them at their initial appearance following arrest.²³

The Portland Cell (2002)

The ‘Portland Cell’ – Jeffrey Leon Battle, Ahmed Ibrahim Bilal, Muhammad Ibrahim Bilal, Patrice Lumumba Ford, Maher Hawash, October Martinique Lewis, and Habis Abdulla Al Saoub – was the name given to a seven-member conspiracy uncovered in Portland, Oregon in late 2002.

On 3 October 2002, a federal grand jury issued indictments for six of the seven suspects. On 4 October 2002, four of the suspects were arrested by the FBI’s Joint Terrorism Task Force: Battle, Ford and Lewis in Portland, Oregon and Muhammad Bilal in Michigan. Describing it as a ‘defining day in America’s war against terrorism’, the US Attorney General John Ashcroft announced the arrests declaring that the FBI had ‘neutralized a suspected terrorist cell within our borders’.²⁴ He immediately set out the charges against those arrested:²⁵

Count One: conspiracy to levy war against the United States

Count Two: conspiracy to provide material support to foreign terrorist organizations

Count Three: conspiracy to contribute services to al Qaeda and the Taliban

²² Federal Rule of Criminal Procedure 5(a) requires that an suspect be presented before a magistrate ‘without unnecessary delay’. In his dissent in *Riverside*, Justice Scalia noted that ‘no federal court considering the question has regarded 24 hours as an inadequate amount of time to complete arrest procedures, and, with the same exception, every court actually setting a limit for probable cause determination based on those procedures has selected 24 hours’ and that ‘Federal courts have reached a similar conclusion in applying Federal Rule of Criminal Procedure 5(a), which requires presentment before a federal magistrate ‘without unnecessary delay’ (ibid, 68-69).

²³ Federal Rules of Criminal Procedure, Rules 5(d)(1)(A) (felonies) and 58(b)(2)(A) (misdemeanours).

²⁴ Remarks of Attorney General John Ashcroft, Press Conference, 4 October 2002.

²⁵ Ibid. A superseding indictment issued the following May included ‘charges of conspiracy to levy war against the United States, conspiracy to provide material support and resources to Al Qaeda, conspiracy to contribute services to Al Qaeda and the Taliban, conspiracy to possess and discharge firearms in furtherance of crimes of violence, possessing firearms in furtherance of crimes of violence and money laundering’ (see ‘Two defendants in ‘Portland Cell’ case plead guilty to conspiracy to contribute services to the Taliban, federal weapons charges’, Department of Justice press release, 18 September 2003).

Count Four: possession of firearms in furtherance of crimes of violence

Ahmed Bilal was flown back to the US from Malaysia on 10 October 2002, following his arrest there in January 2002 on immigration charges.²⁶ The cell's leader, Al Saoub, remained at large until October 2003 when he was killed by Pakistani forces on the border with Afghanistan.²⁷ A seventh suspect, Maher Hawash, was originally detained as a material witness in March 2003 but was not charged as a member of the conspiracy until April 2003.²⁸ In August 2003, Hawash pleaded guilty to a charge of conspiracy to supply services to the Taliban.²⁹ As part of his plea agreement, he admitted that 'he and five other members of the conspiracy agreed to go to Afghanistan to assist the Taliban in fighting against the armed forces of the United States'.³⁰ In September 2003, Ahmed Bilal and Muhammad Bilal pleaded guilty to charges of conspiracy to provide services to the Taliban and conspiracy to possess and discharge firearms in furtherance of crimes of violence and were sentenced to ten years and eight years imprisonment respectively.³¹ In October 2003, Jeffrey Battle and Patrice Lumumba Ford were sentenced to 18 years in prison each for their guilty pleas to charges of seditious conspiracy.³² According to the Department of Justice, both defendants admitted that the purpose of their conspiracy 'was to travel to Afghanistan to fight alongside al Qaeda and the Taliban against American and allied forces'.³³ In December 2003, October Lewis was sentenced to three years imprisonment after pleading guilty to charges of money laundering.

The investigation into the Portland cell involved successful use of intercept evidence against the suspects.³⁴ It involved the coordinated arrest of suspects in multiple jurisdictions, including Malaysia,

²⁶ 'Bilal deported', *The Star (Malaysia)*, 10 October 2002.

²⁷ 'Two plead guilty in Oregon terror case', CNN, 16 October 2003.

²⁸ 'Software engineer held as material witness', CNN, 3 April 2003.

²⁹ 'Oregon resident Maher Hawash pleads guilty to conspiracy to supply services to the Taliban in 'Portland Cell' case', Department of Justice press release, 6 August 2003.

³⁰ Ibid.

³¹ 'Three defendants in 'Portland Cell' case sentenced for conspiring to provide services to the Taliban', Department of Justice press release, 9 February 2004.

³² 'Jeffrey Battle and Patrice Lumumba Ford plead guilty to seditious conspiracy in 'Portland Cell' case', Department of Justice press release, 16 October 2003.

³³ Ibid.

³⁴ Brief of Janet Reno and others as Amicus Curiae in *Padilla v Commander, Consolidated Naval Brig*, (No 05-6396), 14 June 2005, pp 23-24: 'Several members of a terrorist cell in Portland, Oregon were indicted on conspiracy, material support, and firearms charges. One of the defendants pleaded guilty and testified against the others, securing guilty pleas from them. Six of the men had attempted to travel to Afghanistan to assist the Taliban. The government used *electronic surveillance* and the authorities of the USA PATRIOT Act to *gather evidence in the case*' [emphasis added]. Note that 'electronic surveillance' is the US term for intercept (see e.g. US Code, § 2510(12)).

Michigan and Oregon and investigations spanning several more including Afghanistan, China, Hong Kong and Pakistan.³⁵ The investigation involved coordination between a large number of US government agencies, state and local police, including the Bureau of Alcohol Tobacco and Firearms, Drug Enforcement Administration, the Internal Revenue Service, the U.S. Marshals Service, the U.S. Department of Agriculture, the Oregon State Police, the Portland Police Bureau, the U.S. Postal Service, the Beaverton Police Department, the Port of Portland, the Vancouver Police Department, and the following agencies in the Department of Homeland Security: ICE (formerly INS), U.S. Customs Service, U.S. Secret Service, U.S. Coast Guard, and Federal Protective Services.³⁶

The Lackawanna Six (2002)

The 'Lackawanna Six' was the name given to a group of six Yemeni-Americans from Lackawanna, near Buffalo, in upstate New York who had each trained at the Al Farooq training camp run by Al Qaeda in Afghanistan. The six men were Mukhtar Al-Bakri, Sahim Alwan, Faysal Galab, Yahya Goba, Shafal Mosed and Yaseinn Taher.

On 11 September 2002, Mukhtar Al Bakri was detained by authorities in Bahrain and interviewed by the FBI. On 13 September 2002, the five remaining suspects were arrested by FBI in Buffalo, New York. On 14 September 2002, the five suspects were arraigned and charged with providing material support to terrorism.³⁷ The same day, Deputy Attorney General Larry Thompson stated 'United States law enforcement has identified, investigated and disrupted an Al Qaeda-trained, terrorist cell on American soil'.³⁸ Al Bakri was flown back to the US on 15 September and arraigned on 17 September.³⁹

Between January and March 2003, the six men pleaded guilty to material support to terrorism. Each of the men admitted to receiving training in the use of automatic weapons, grenade launchers and explosives at the Al Farooq camp between April and May 2001, during which time the camp was

³⁵ See e.g. Department of Justice press release, 18 September 2003, referring to the defendant's plot involving travel to Hong Kong and China.

³⁶ 'Two 'Portland Cell' Defendants Plead Guilty to Two Charges', FBI press release, 22 September 2003. See also the US Attorney General's description of the arrests, n24 above, as a 'textbook example of the central role that cooperation among local, state and federal law enforcement plays in the prevention of terrorist attacks'.

³⁷ 'Families and Neighbors Defend 5 Linked to Terror' by Marc Santora, *New York Times*, 15 September 2002.

³⁸ Remarks of Deputy Attorney General Larry Thompson, News Conference, 14 September 2002.

³⁹ '6th Man Arraigned as Member of Qaeda Cell Near Buffalo' by John Kifner and Marc Santora, *New York Times*, 17 September 2002.

visited by Osama Bin Laden and Ayman Al Zawahiri, the leader of Egyptian Islamic Jihad.⁴⁰ In December 2003, all six were sentenced to imprisonment: Al Bakri and Goba receiving ten years,⁴¹ Alwan nine and a half years, Taher and Mosed eight years each,⁴² and Faysal Galab seven.⁴³

As with the FBI investigation of the Portland cell, intercept evidence featured prominently in the federal case against the Lackawanna Six,⁴⁴ and proved central to securing the guilty pleas as PBS news reported:⁴⁵

Confronted with evidence obtained through electronic surveillance and other means, the six admitted that they had gone to Afghanistan the previous year and pleaded guilty to training with a terrorist organization.

The FBI investigation similarly involved significant international links, including Afghanistan, Bahrain, Pakistan and Yemen. US authorities also cited the need to intervene earlier than they might otherwise have in order to protect the public as a factor in their investigation of the Lackawanna Six, as FBI Director Robert Mueller explained in October 2003:⁴⁶

At points in the investigation, there were pieces of evidence and information that gave us some sense of urgency that this group of individuals might be poised to commit an attack Do you and the American people want us to take the chance, if we have information where we believe that a group of individuals is poised to commit a terrorist act in the United States that'll kill Americans? Should we take the chance where we believe we have intelligence, we have information, we have evidence, that they're poised to commit an attack, and we just should let it go and wait for the attack, and then conduct our investigation after the fact? I think not. I think the American people expect us to investigate, to develop the intelligence, and to prevent the next attack.

⁴⁰ See 'Chasing the Sleeper Cell', PBS Frontline, 16 October 2003.

⁴¹ 'Man Who Trained With Qaeda Gets 10-Year Sentence', *New York Times*, 4 December 2003.

⁴² 'Qaeda Trainee Is Sentenced To 8-Year Term' by David Staba, *New York Times*, 5 December 2003; 'New York Man in Qaeda Case Will Serve 8 Years' by David Staba, *New York Times*, 10 December 2003.

⁴³ 'Qaeda Camp Attendee Gets 7 Years' by David Staba, *New York Times*, 17 December 2003.

⁴⁴ See brief of former US Attorney General Janet Reno, n34 above: 'The evidence against them [the Lackawanna Six] was gathered from electronic surveillance'.

⁴⁵ 'Chasing the Sleeper Cell', n40 above.

⁴⁶ Ibid, PBS transcript <http://www.pbs.org/wgbh/pages/frontline/shows/sleeper/inside/howdangerous.html>.

The Virginia jihad network (2003)

The 'Virginia jihad network' was a group of 13 men based in Northern Virginia accused by the FBI of links to Lashkar-e-Tayyaba,⁴⁷ a militant Kashmiri organisation that has been proscribed in the UK and elsewhere as a terrorist group.⁴⁸ The suspects were Mohammed Aatique, Hammad Abdur Raheem, Caliph Basha Ibn Abdur Raheem, Ibrahim Ahmed Al Hamdi, Ali Al Timini, Sabri Benkhala, Ali Asad Chandia, Seifullah Chapman, Khwaja Mahmood Hasan, Masoud Ahmad Khan, Yong Ki Kwon, Randall Todd Royer, and Donald Thomas Surratt.

On 27 June 2003, a federal grand jury indictment was unsealed in the U.S. District Court in Alexandria, Virginia detailing a total of 41 counts under eight charges against 11 of the men.⁴⁹ Announcing the charges, US Attorney Paul McNulty said: '10 miles from Capitol Hill, in the streets of northern Virginia, American citizens allegedly met, plotted and recruited for a violent jihad'.⁵⁰ At the time the indictment was unsealed, two of the suspects were already being held on other charges: Ibrahim Al Hamdi on a weapons charge and Yong Ki Kwon on immigration charges.⁵¹ The same day, another six suspects were arrested by the FBI in raids in Maryland, Virginia and Pennsylvania.⁵² The remaining three suspects named in the indictment, Benkhala, Chapman and Hasan, were arrested in Saudi Arabia in July 2003 and flown back to the US.⁵³ Al Timini was not indicted as a member of the group until September 2004.⁵⁴ The last member of the group, Ali Asad Chandia was arrested on 15 September 2005 and charged on 16 September with material support for Lashkar-e-Tayyaba.⁵⁵

Between August 2003 and January 2004, six of the men – Aatique, Al Hamdi, Hasan, Kwon, Royer and Surratt – pleaded guilty to conspiracy and gun charges.⁵⁶ Five others, Hammad Abdur Raheem, Al

⁴⁷ Also transliterated as 'Lashkar-i-Taiba'.

⁴⁸ Lashkar-e-Tayyaba was proscribed under the Terrorism Act 2000 by the Home Secretary in March 2001– see Terrorism Act 2000 (Proscribed Organisations) (Amendment) Order 2001 (SI 2001/1261).

⁴⁹ A copy of the indictment is available at <http://fl1.findlaw.com/news.findlaw.com/hdocs/docs/terrorism/usroyer603ind.pdf>.

⁵⁰ CNN transcript, 27 June 2003, <http://transcripts.cnn.com/TRANSCRIPTS/030627/wbr.oo.html>.

⁵¹ 'Feds charge 11 men with conspiracy in overseas jihad', CNN, 27 June 2003.

⁵² 'US Officials arrest 8 in 'Virginia Jihad Network'' by William McQuillen, Bloomberg, 27 June 2003.

⁵³ 'U.S. tries to tie 'Virginia jihad' suspect to al Qaeda' by Terry Fieden, CNN, 25 July 2003.

⁵⁴ 'Muslim lecturer indicted in terror case' by Kevin Bohn, CNN, 23 September 2004.

⁵⁵ 'U.S. Says Maryland Man Aided Pakistani Terror Group', *New York Times*, 17 September 2005

⁵⁶ 'Two defendants in Virginia Jihad case plead guilty to weapons charges, will cooperate with ongoing investigation', Department of Justice, 16 January 2004.

Timini, Chapman, Chandia and Khan, were later convicted following trials.⁵⁷ All those convicted received prison sentences: Aatique (ten and a half years), Abdur Raheem (52 months),⁵⁸ Al Hamdi (15 years),⁵⁹ Al Timini (life), Chandia (15 years),⁶⁰ Chapman (65 years),⁶¹ Hasan (37 months),⁶² Khan (life imprisonment plus 45 years),⁶³ Kwon (38 months),⁶⁴ Royer (20 years),⁶⁵ and Surratt (46 months). Two of the defendants, Caliph Basha Ibn Abdur Raheem and Benkhala, were acquitted.⁶⁶

Like the FBI investigation of the Portland cell and the Lackawanna Six, the investigation into the Virginia network spanned multiple jurisdictions and several countries including Afghanistan, Maryland, Pakistan, Pennsylvania, Saudi Arabia, the UK and Virginia. According to a paper produced by the counter-terrorism section of the US Department of Justice, for instance, evidence from the UK was 'essential' to prosecuting Chandia:⁶⁷

The assistance of the Terrorism Branch of New Scotland Yard was essential in the conviction of Chandia. Approximately seven witnesses from New Scotland Yard testified at the trial, including a computer forensic expert and a fingerprint examiner. In addition, a number of New Scotland Yard agents testified about the searches of Mohammed Ajmal Khan's residences and computers in the United Kingdom. During the trial of Chandia, the government entered over two dozen exhibits that came from the searches in the United Kingdom.

⁵⁷ 'Muslim Man Convicted of Urging Holy War' by Matthew Barakat, Associated Press, 26 April 2005; 'Scholar Is Given Life Sentence in 'Virginia Jihad' Case' by Eric Lichtblau, *New York Times*, 14 July 2005.

⁵⁸ 'U.S. Judge Reduces 'Va. Jihad' Sentences' by Jerry Markson, *Washington Post*, 30 July 2005.

⁵⁹ 'Randall Todd Royer and Ibrahim Ahmed Al-Hamdi sentenced for participation in Virginia Jihad network', Department of Justice, 9 April 2004.

⁶⁰ 'Teacher Sentenced for Aiding Terrorists' by Jerry Markson, *Washington Post*, 26 August 2006.

⁶¹ 'U.S. Judge Reduces 'Va. Jihad' Sentences' by Jerry Markson, *Washington Post*, 30 July 2005.

⁶² 'Judge Slashes Sentences of 2 in 'Va. Jihad'', by Jerry Markson, *Washington Post*, 25 February 2006.

⁶³ 'See n61 above.

⁶⁴ 'See n62 above.

⁶⁵ 'Randall Todd Royer and Ibrahim Ahmed Al-Hamdi sentenced for participation in Virginia Jihad network', Department of Justice, 9 April 2004.

⁶⁶ 'Final 'Va. Jihad' Defendant Acquitted' by Jerry Markon, *Washington Post*, 10 March 2004

⁶⁷ Department of Justice, *Counter-terrorism White Paper*, 22 June 2006.

Brooklyn Bridge plot (2003)

On 19 June 2003, US Attorney General John Ashcroft announced that an Al Qaeda plot to destroy the Brooklyn Bridge and other key US landmarks had been foiled by the FBI's use of a key suspect turned informant. According to Ashcroft, the case 'highlight[ed] the very real threats that still exist here at home in this war against terrorism'.⁶⁸ In particular he noted that:⁶⁹

This case has many of the hallmarks we have come to recognise in Al Qaeda operations: the recruitment of sympathetic operatives, extensive planning and travel inside several countries, and extensive use of hard-to-track communications such as cell phones and Internet cafes.

The Attorney General gave details of Al Qaeda plans for a simultaneous operation in New York and Washington DC in 2002 which included the destruction 'of a bridge in New York City by severing its suspension cables'.⁷⁰ The Brooklyn Bridge was originally selected as a target of the planned New York attacks but later abandoned due to 'the bridge's structure and security'.⁷¹ Details of other plans included the use of ultralight aircraft, and 'the possibility of derailing a train into a chemical storage facility in Washington'.⁷²

As part of the press conference announcing details of the plots, the Attorney General revealed that the key suspect, Lyman Faris, an Ohio truck driver, had earlier agreed to plead guilty to federal charges of conspiracy and providing material support to Al Qaeda.⁷³ On 19 March 2003, Faris was approached by FBI agents and agreed to become an informant.⁷⁴ On 17 April, he made an agreement to plead guilty to charges of providing material support and resources to Al Qaeda and conspiracy for providing the Al Qaeda with information about possible U.S. targets for attack.⁷⁵ In October 2003, he was sentenced to 20 years imprisonment.⁷⁶ U.S. Attorney Paul McNulty described Faris's conviction

⁶⁸ Remarks of John Ashcroft on plea agreement announcement, 19 June 2003.

⁶⁹ Ibid.

⁷⁰ Ibid.

⁷¹ Ibid.

⁷² 'Captured al-Qa'eda man was FBI spy' by David Rennie, *Daily Telegraph*, 26 June 2003.

⁷³ <http://fl1.findlaw.com/news.findlaw.com/hdocs/docs/faris/usfaris603criminf.pdf> (copy of Faris's indictment).

⁷⁴ 'Terrorists in Our Midst' by Michael Isikoff, Mark Hosenball and Daniel Klaidman, *Newsweek*, 19 June 2003.

⁷⁵ Ibid.

⁷⁶ 'Lyman Faris sentenced for providing material support to Al Qaeda', Department of Justice, 28 October 2003.

as ‘a significant accomplishment in our mission to prevent another terrorist strike in the United States’.⁷⁷

As in previous terrorism cases, intercept evidence again played a key part in securing Faris’s plea agreement. An amicus brief lodged in 2005 by former US Attorney General Janet Reno cited Faris’s case as a key example of terrorism cases prosecuted in the US since 9/11 involving intercept evidence.⁷⁸

lyman Faris pleaded guilty to providing material support for terrorism. Faris visited an al Qaeda training camp in Afghanistan and investigated the destruction of bridges in the United States by severing their suspension cables. The government *secured evidence through* physical and *electronic surveillance* and a search of his residence. After his arrest Faris cooperated with investigators, leading to the indictment of Nuradin Abdi for plotting to blow up a Columbus, Ohio shopping mall.

Columbus shopping mall plot (2004)

On 28 November 2003, Nuradin Abdi, a Somali national, was arrested in Cincinnati, Ohio by federal agents and charged with lying on his application to enter the United States.⁷⁹

On 10 June 2004, a federal grand jury in Columbus, Ohio returned a sealed four-count indictment against Abdi, including conspiracy to provide material support to Al Qaeda, and fraudulent misuse of refugee travel documents.⁸⁰ Among the counts was the allegation that Abdi sought to travel to Ethiopia, ‘for the purpose of obtaining military-style training in preparation for violent jihad’.⁸¹ On 14 June 2004, US Attorney General John Ashcroft announced that the indictment against Abdi had been unsealed, declaring ‘the American heartland was targeted for death and destruction by an al Qaeda cell, which allegedly included a Somali immigrant, who will now face justice’.⁸² Ashcroft also identified Abdi as an associate of lyman Faris (see Brooklyn Bridge plot, above) and made reference to a plot to destroy a shopping mall:⁸³

⁷⁷ Ibid.

⁷⁸ Brief of Janet Reno, n34 above, pp 23-24, emphasis added.

⁷⁹ ‘Somali man pleads guilty to plot’ by Jodi Andes, *The Columbus Dispatch*, 1 August 2007.

⁸⁰ ‘Ohio man indicted for providing material support to Al Qaeda, falsely obtaining and using travel documents’, Department of Justice, 14 June 2004.

⁸¹ Ibid.

⁸² Remarks of John Ashcroft on Abdi indictment announcement, Department of Justice, 14 June 2004.

⁸³ Ibid.

Upon returning to the Columbus, Ohio, area, it is alleged that Abdi, along with admitted al Qaeda operative Faris and other co-conspirators, initiated a plot to blow up a Columbus area shopping mall. It is also alleged that in pursuit of this plot, Abdi received bomb-making instructions from one of those co-conspirators.

On 31 July 2007, Abdi pleaded guilty to conspiracy to provide material support to terrorists, in return for which the other charges against him were dropped and he was sentenced to 10 years imprisonment.⁸⁴ According to the statement of facts agreed upon by the government and Abdi, Abdi confirmed that in August 2002 he proposed a plot to bomb a shopping mall and that he was 'later provided with compact discs containing instructions on how to make explosives'.⁸⁵ According to the Department of Justice, Abdi's admissions were corroborated 'in a variety of ways, including bank records, travel records, invoices, and items seized in search warrants'.⁸⁶ The list of 102 exhibits filed by the US Attorney's Office in preparation for Abdi's trial included extensive reference to intercepted emails between Abdi and others:⁸⁷

The list includes references to meetings, phone calls, and trips the government has previously alleged in various court filings Mr. Abdi, 35, sent e-mails in 2001 and 2002 to a man convicted of trying to destroy the Brooklyn Bridge, according to the list filed Thursday in U.S. District Court in Columbus. An e-mail on July 31, 2001, from Mr. Abdi to Lyman Faris showed Web sites for night vision equipment and anti-surveillance equipment, according to the list. E-mails on Oct. 28, 2002, from Mr. Abdi to Faris contain information on an exhortation to holy war and 'Islamic extremist information' the list shows. Faris, 38, was sentenced in 2003 to 20 years for the plot to topple the Brooklyn Bridge.

Abdi's conviction was described by US Attorney Gregory Lockhart as 'the product of a *persistent global investigation* by agents and officers who used every legal tool available to document the actions of one who conspired to aid terrorists'.⁸⁸ The case also illustrates that although Abdi was not charged with terrorism offences until June 2004, he was nonetheless charged with immigration offences immediately following his arrest in November 2003.

⁸⁴ 'Ohio man pleads guilty to conspiracy to provide material support to terrorists', Department of Justice, 31 July 2007; 'Somali national pleads guilty to terror plot: US prosecutors', Agence France Presse, 31 July 2007.

⁸⁵ Ibid.

⁸⁶ Ibid.

⁸⁷ 'E-mails, phone calls on exhibit list for Ohio man's trial', Associated Press, 9 June 2007.

⁸⁸ Ibid, emphasis added.

New York subway station plot (2004)

On 27 August 2004, a day before the Republican National Convention at Madison Square Garden, James Elshafay (a US citizen) and Shahawar Matin Siraj (a Pakistani national) were arrested by police in New York City in connection with a plot to plant explosives at the 34th Street subway station.⁸⁹ On 28 August 2004, the men were charged in federal court with conspiracy to damage or destroy a public transportation system by means of an explosive.⁹⁰ In October 2004, Elshafay pleaded guilty and agreed to testify against Siraj.⁹¹

Unusually for a federal terrorism case, the investigation of the subway plot was led by the Intelligence Division of the New York Police Department rather than by the FBI. The federal government's case against Siraj relied heavily on the use of evidence from informants and covert surveillance, including extensive recording of the suspect's conversations:⁹²

The evidence included hours of secretly recorded conversations between Siraj and Osama Eldawoody, an Egyptian nuclear engineer who became a paid informant for the New York City Police Department's Intelligence Division, in which Siraj expressed his hatred for America and discussed his desire to place explosives on various bridges and in subway stations in New York City, including the subway station at 34th Street.

On 24 May 2006, Siraj was convicted on four counts.⁹³ Following his conviction, US attorney Roslynn Mauskopf also cited the importance of intervening early to prevent harm to the public, stating: 'Siraj conspired to plant a bomb in one of the most active transportation hubs in America. Thanks to the diligent work of law enforcement, the plot never developed beyond the planning stage, and the

⁸⁹ '2 Charged With Plotting To Bomb Train Station' by Alan Feuer And William K. Rashbaum, *New York Times*, 29 August 2004

⁹⁰ Ibid.

⁹¹ 'Staten Island Man Describes Shattered Life, Then a Plot to Bomb a Subway Station' by William K. Rashbaum, *New York Times*, 10 May 2006.

⁹² 'Shahawar Matin Siraj sentenced to thirty years of imprisonment for conspiring to place explosives at the 34th Street subway station in New York', Department of Justice, 8 January 2007. See also *New York Times*, n89 above: '[I]n tape-recorded conversations with the informant this month, both men can be heard repeatedly discussing plans to plant bombs on the Verrazano-Narrows Bridge and in subway stations, according to the complaint, and Mr. Elshafay had drawn a map of the bridges and police precincts on Staten Island. The [federal] complaint also says that at one point Mr. Siraj declared he was 'ready for jihad', and that in another taped conversation, Mr. Elshafay declared his hatred of 'Zionists' and expressed 'solidarity with the Palestinian people'.

⁹³ 'Guilty Verdict in Plot to Bomb Subway Station', by William K. Rashbaum, *New York Times*, 25 May 2006.

public was never at risk'.⁹⁴ Elshafay was later sentenced to five years imprisonment,⁹⁵ and Siraj to 30 years.⁹⁶

Toledo plot (2006)

On 16 February 2006 a federal grand jury in Cleveland, Ohio returned a sealed indictment against three Toledo residents on charges of conspiring to commit acts of terrorism against persons overseas, including U.S. military personnel serving in Iraq, and with conspiring to provide material support to terrorists.⁹⁷

On 19 February 2006, two of the men named in the indictment – Marwan Othman El-Hindi, Zand Wassim Mazloun – were arrested in Toledo, Ohio.⁹⁸ The third man – Mohammad Zaki Amawi – was arrested in Jordan and flown back to Cleveland.⁹⁹ On 21 February, all three men appeared in federal court for their arraignments.¹⁰⁰ The same day, US Attorney General Alberto Gonzales held a press conference announcing the charges against the three men, and giving details of the allegations against them:¹⁰¹

The three defendants educated themselves on how to make and use explosives and suicide bomb vests. The materials included both plastic explosives and nitroglycerine. The three carried out their own jihad military training exercises, which included the use of firearms and the shooting of weapons; one sought mortar training. The three defendants also conspired to provide material support including money, training, communications equipment, computers or personnel, including themselves, to co-conspirators in the Middle East.

FBI Director Robert Mueller described the arrests and indictments as 'examples of how, through close cooperation with our partners and enhanced intelligence capabilities, we are able to detect terrorist

⁹⁴ Ibid.

⁹⁵ 'Man Gets Five Years in Plot to Bomb Subway', Associated Press, 3 March 2007.

⁹⁶ See n91 above.

⁹⁷ http://www.usdoj.gov/opa/documents/indictment_22006.pdf (copy of indictment).

⁹⁸ '3 charged in terror plot; local suspects planned attacks in Iraq, U.S. says' by Mike Wilkinson And Christina Hall, *The Toledo Blade*, 22 February 2006.

⁹⁹ Ibid.

¹⁰⁰ Ibid.

¹⁰¹ Remarks of Attorney General Alberto R Gonzales at the Ohio Terrorism Indictments Press Conference, Department of Justice, 21 February 2006.

planning and prevent acts of terrorism before they occur'.¹⁰² Gonzales similarly cited the need to intervene early and the importance of using the criminal law against suspected terrorists:¹⁰³

We cannot wait until an attack happens. We will continue to use our criminal laws as Congress intended, to charge individuals once they conspire to provide support to terrorism or conspire to kill abroad.

On 7 February 2007, two additional suspects – Khaleel Ahmed and Zubair Ahmed – were named as part of a superseding grand jury indictment in Toledo.¹⁰⁴ They were arrested in Chicago on 21 February and appeared before a federal magistrate before being sent to Cleveland.¹⁰⁵ The five men are due to stand trial in March 2008.¹⁰⁶

Sears Tower/FBI Miami plot (2006)

On 22 June 2006, a federal grand jury in Miami returned a sealed indictment containing terrorism charges against seven men – Patrick Abraham, Burson Augustin, Rothschild Augustin, Narseal Batiste, Naudimar Herrera, Lyglenson Lemorin and Stanley Grant Phanor.¹⁰⁷ Later that day, five of the men were arrested.¹⁰⁸ Two of the men were already in custody, Phanor being held on a state firearms charge and Abraham on immigration charges.¹⁰⁹

On 23 June, all seven men appeared in court charged with conspiracy to provide material support to Al Qaeda, conspiracy to maliciously damage and destroy by means of an explosive, and conspiring to levy war against the government of the United States.¹¹⁰ The same day, US Attorney General Alberto Gonzales gave a press conference, alleging the men of 'planning attacks on numerous targets, including bombing the Sears Tower in Chicago, the FBI building in North Miami Beach, Florida, and

¹⁰² 'Three Men Charged with Conspiring to Commit Terrorist Acts Overseas, Providing Material Support to Terrorists', Department of Justice press release, 21 February 2006.

¹⁰³ Press Conference, n101 above, 21 February 2006.

¹⁰⁴ '2 Chicago-area men accused in Ohio terror case' by Mike Robinson, Associated Press, 21 February 2007.

¹⁰⁵ Ibid.

¹⁰⁶ 'Federal trial on terrorism counts for 5 rescheduled in Toledo', *Toledo Blade*, 3 October 2007.

¹⁰⁷ http://www.usdoj.gov/opa/documents/cts_batiste_indictment.pdf (copy of grand jury indictment).

¹⁰⁸ See e.g. 'Al-Qaeda plot to blow up Sears Tower' by Lee Glendinning and Sam Knight, *The Times*, 23 June 2006; 'FBI detains 7 in domestic terror probe', CNN, 23 June 2006.

¹⁰⁹ 'Indictment: Suspects wanted to 'kill all the devils we can'', CNN, 24 June 2006.

¹¹⁰ 'Seven Florida Men Charged with Conspiring to Support al Qaeda, Attack Targets in the United States', Department of Justice, 23 June 2006.

other government buildings in Miami-Dade County'.¹¹¹ According to FBI Deputy Director John Pistole, the men 'conspired to murder countless Americans through attacks that would be, in their words, quote, 'just as good or greater than 9/11''.¹¹² US Attorney for Miami, Alexander Acosta said, 'we believe that these defendants sought the support of al Qaeda to, in their own words, wage jihad and war against the United States to 'kill all the devils that we can''.¹¹³

Attorney General Gonzales cited the case as an instance of the need to intervene early in order to protect the public, stating that 'because of the fine work by law enforcement, these men were unable to advance their deadly plot beyond the initial planning stage'.¹¹⁴ The investigation also involved the use of informants¹¹⁵ and cooperation between multiple agencies, including the FBI, the Miami police department, U.S. Immigration and Customs Enforcement, and the Criminal Investigation Unit at the Internal Revenue Service.¹¹⁶ The trial of the seven men began in October 2007, with evidence from intercepted communications and covert surveillance featuring heavily in the prosecution case.¹¹⁷

On one of the 15,000 FBI recordings, Narseal Batiste is overheard saying he would make sure no one survived destruction of the 110-story Sears Tower because his soldiers would be ready to shoot down anyone who escaped.

Fort Dix army base plot (2007)

On 7 May 2007, the FBI filed a federal complaint in Camden, New Jersey,¹¹⁸ alleging the involvement of six men – Dritan Duka, Eljvir Duka, Shain Duka, Serdar Tatar, Mohamad Shnewer, and Agron Abdullahu – in a plot to kill US soldiers at Fort Dix army base in New Jersey. The six men were arrested by the FBI in New Jersey and Philadelphia on the evening of 7 May and appeared in federal court on 8

¹¹¹ Transcript of Attorney General Alberto R Gonzales at the Press Conference on Florida Terrorism Indictments, Department of Justice, 23 June 2006.

¹¹² Ibid.

¹¹³ 'Terror Plot Was in 'Earliest Stages,' Gonzales Says' by John O'Neil, New York Times, 23 June 2006.

¹¹⁴ Ibid.

¹¹⁵ See e.g. 'F.B.I. Killed Plot in Talking Stage, a Top Aide Says' by Scott Shane and Andrea Zarate, *New York Times*, 24 June 2006: 'The indictment made clear that a pivotal role was played by an unidentified undercover F.B.I. informer who posed as a Qaeda member and met repeatedly with the reported ringleader of the group, Narseal Batiste'.

¹¹⁶ See n110 above.

¹¹⁷ 'Trial starts in Liberty City 7 case' by Curt Anderson, Associated Press, 3 October 2007.

¹¹⁸ <http://www.npr.org/documents/2007/may/ftdix/ftdixplot.pdf> (copy of complaint).

May charged with conspiring to kill officers of the United States government.¹¹⁹ In a statement, the US Attorney's Office said that the men's 'alleged intention was to conduct an armed assault on the army base and to kill as many soldiers as possible'.¹²⁰ The six men are expected to face trial in January 2008.¹²¹

The FBI investigation into the alleged plot covered multiple jurisdictions, including Delaware, New Jersey and Pennsylvania. As with previous post-9/11 terrorism cases, the FBI cited the need to intervene early to prevent an attack. Said one FBI agent, 'Looking at the weapons they were trying to obtain, we dodged a lot of bullets'.¹²² The investigation lasted 17 months and involved evidence from undercover informants and recordings of the suspects:¹²³

During the months leading up to Monday's arrest, the alleged plotters are recorded several times weighing the merits of additional weapons purchases. Our cooperating witness claimed to have access to arms and provided the alleged plotters a list of weapons for sale. Meanwhile, he funnelled information to the FBI and JTTF about the alleged plotters' plans as they developed. In early April, one of the alleged plotters, Ditrán Duka, appeared to be ready to purchase a dangerous cache of weapons, including Russian-made Kalashnikov semi-automatic rifles, or AKs. 'I want all of the AKs, all the M-16s ... and I need all the handguns, one of each ... everything he had on the list,' Duka is recorded saying.

JFK Airport plot (2007)

On 2 June 2007, the FBI announced that four men – Russell Defreitas, Kareem Ibrahim, Abdul Kadir and Abdel Nur – had been charged with 'conspiring to attack JFK Airport by planting explosives to blow up the airport's major jet-fuel supply tanks and pipeline'.¹²⁴ Defreitas had been arrested in Brooklyn on the evening of 1 June and was arraigned in federal court the following day.¹²⁵ Ibrahim and Kadir were arrested in Trinidad on 2 June and appeared in court there on 4 June in relation to the

¹¹⁹ '6 arrested in plot to kill soldiers at Fort Dix', New Jersey Star-Ledger, 8 May 2007; 'Official: Radicals wanted to create carnage at Fort Dix', CNN, 9 May 2007.

¹²⁰ 'Six Arrested in Plot to Storm N.J. Army Base' by Richard Esposito, ABC News, 8 May 2007.

¹²¹ 'Fort Dix defendants air prison grievances' by Maria Panaritis, *Philadelphia Inquirer*, 31 October 2007.

¹²² 'Arrests over US army base 'plot'', BBC, 9 May 2007.

¹²³ 'Attack Foiled: Undercover Probe Busts Terror Plot', FBI press release, 8 May 2007.

¹²⁴ 'Four individuals charged in plot to bomb John F. Kennedy international airport', Department of Justice, 2 June 2007.

¹²⁵ '4 Men Accused of Plot to Blow Up Kennedy Airport Terminals and Fuel Lines' by Cara Buckley and William K Rashbaum, *New York Times*, 3 June 2007.

US request for their extradition.¹²⁶ Nur surrendered to authorities in Trinidad on 5 June.¹²⁷ US Attorney Roslynn Mauskopf said:¹²⁸

The defendants are charged with conspiring to bomb one of the busiest airports in the United States, located in one of the most densely populated areas in the northeast – had the plot been carried out, it could have resulted in unfathomable damage, deaths, and destruction.

The FBI highlighted the international nature of the alleged plot, noting that the defendants ‘traveled frequently among the United States, Guyana and Trinidad to discuss their plans and solicit the financial and technical assistance of others’.¹²⁹ In particular, the assistant director-in-charge of the FBI's New York field office stated that:¹³⁰

The defendants used their connections to present their terrorist plot to radical groups in South America and the Caribbean, including senior leadership of Jamaat Al Muslimeen ('JAM'), which was responsible for a deadly coup attempt in Trinidad in 1990.

As with other terrorism cases, the government cited the importance of intervening early, with one US counter-terrorism official telling the Daily Telegraph, ‘obviously, you don't want to tip off every suspect that they are being monitored. On the other hand, we are not going to wait until the fuse is lit’.¹³¹ The FBI case against the four men also made extensive reference to evidence from intercepted communications and cover surveillance:¹³²

In a recorded conversation following one of the surveillance missions to JFK airport, Defreitas predicted that the attacks would result in the destruction of ‘the whole of Kennedy’, that only a few people would survive the attack, and that because of the location of the targeted fuel pipelines, part of Queens would explode In a later recorded conversation with his co-conspirators in May 2007, Defreitas compared the plot to attack JFK airport to the attacks on the World Trade Center on September 11, 2001, stating, ‘even the Twin Towers can’t touch it’, adding that, ‘this can destroy the economy of America for some time’.

¹²⁶ ‘US plot' pair in Trinidad court’, BBC, 4 June 2007.

¹²⁷ ‘Fourth 'JFK plot' man surrenders’, BBC, 5 June 2007.

¹²⁸ Department of Justice statement, n124 above.

¹²⁹ ‘Plot to blow up JFK airport thwarted’ by Chris Micaud, *The Scotsman*, 3 June 2007.

¹³⁰ Department of Justice statement, n124 above.

¹³¹ ‘Plot to blow up JFK is 'tip of the iceberg'’ by Toby Harden, *Daily Telegraph*, 5 June 2007.

Conclusion

In July 2007, the Home Office released an paper arguing that the ‘scale and nature of the current terrorist threat’ together with the ‘increasing complexity of cases’ requires the extension of the maximum period of pre-charge detention beyond 28 days.¹³³ Although the Home Office conceded that ‘there has been no case in which a suspect was released but a higher limit than 28 days would definitely have led to a charge’,¹³⁴ it nonetheless cited the increasing threat and complexity of cases as justification for further extension.

However, the experience of US law enforcement in investigating complex terror plots shows that the increasing threat and complexity of cases is no barrier to the prompt charging of suspects. Our survey of ten of the most high-profile terrorism cases in the US after 9/11 shows that police and FBI face the same difficulties as UK police, including the intention of terrorist groups to cause mass casualties with no warning; the pressure upon law enforcement to intervene early to protect the public; the increasing complexity of investigations; and the presence of international links.

Nonetheless, in all ten cases examined, each suspect was charged with one or more criminal offences within 48 hours of their arrest. Indeed, in a majority of cases, suspects were charged *prior* to being arrested due to the use of indictments by federal grand juries. More generally, our examination of US law under the Fourth Amendment shows that the United States has far more effectively preserved traditional common law guarantees against excessive pre-charge detention than the UK itself.

Other than the fact that US authorities are bound to respect the constitutional guarantees of the Fourth Amendment, the key difference between UK and US terrorism investigations appears to be the extensive reliance by the police and FBI upon intercept evidence in prosecuting suspected terrorists. We have previously argued for the UK’s ban on intercept evidence to be lifted.¹³⁵ Our examination of the practical experience of using intercept in US terrorism cases has only reinforced our view that lifting the ban in the UK is a necessary step towards fighting terrorism within the framework of the rule of law.¹³⁶

¹³² Ibid. See also ‘FBI thwarts Islamic plot to blow up JFK’ by Tim Shipman, *Daily Telegraph*, 3 June 2007.

¹³³ Home Office, *Options for pre-charge detention in terrorism cases* (July 2007), p8.

¹³⁴ Ibid.

¹³⁵ See JUSTICE, *Intercept Evidence: Lifting the ban* (October 2006).

¹³⁶ As our 2006 report makes clear, we support only the use of lawful interceptions as evidence. The use of unlawful interceptions, along the lines of the secret NSA warrantless monitoring of private communications identified by the New York Times in 2005 (see ‘Bush let US spy on callers without courts’ by James Risen and Eric Lichtblau, *New York Times*, 16 December 2005) obviously falls outside the framework of a lawful response to terrorism.

No western democracy faces a greater threat of terrorism from Al Qaeda and related groups than the US. Despite this, the proven ability of US law enforcement to charge suspects in complex terror plots within 48 hours of arrest without resort to exceptional measures shows that UK proposals to extend pre-charge detention are both unjustified and unnecessary.

Appendix: The grand jury system

The grand jury system, which fell out of use in England and Wales in the early twentieth century and abolished in 1933, continues to be an integral part of the criminal process in the US. It is the principle device whereby indictments are secured against suspects, especially in large-scale investigations. As this report makes clear, it is particularly used in terrorism cases in the US and one of the mechanisms whereby suspects are able to be charged within 48 hours of arrest. Indeed, a grand jury is constitutional requirement for certain offences under the Fifth Amendment, which provides among other things that:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger;

The grand jury was an ancient device of the English common law, recognised in Magna Carta¹³⁷ and a prerequisite in any indictable offence. The role of the grand jury was to consider bills of indictments and, in particular, to hear witnesses in support of their prosecution to determine whether there is sufficient evidence to justify the indictment of the accused.¹³⁸ Its use in England and Wales declined across the 19th century, though, and the institution was formally abolished by the Administration of Justice (Miscellaneous Provisions) Act 1933. In the US, by contrast, the federal grand jury operates as not only a device to test prosecution evidence prior to charge, but also enables prosecutors to compel testimony from witnesses. In addition, the proposed defendant need not receive notice of the jury and proceedings of grand juries are confidential until unsealed by the court.

We do not make any recommendation for the reintroduction of grand juries in the UK. Although the more obvious procedure is for suspects to be arrested and then charged, with prosecution evidence being tested via committal proceedings in the magistrates court, it remains open to the Crown Prosecution Service to apply to a High Court judge for consent to prefer a bill of indictment against a suspect.¹³⁹ There is, in any event, nothing to prevent charges being prepared prior to arrest and then brought swiftly following arrest. The complaint that this is impractical in terrorism cases, however, is significantly undercut by the fact that it is standard practice in the US. It is also appropriate, at a time

¹³⁷ See clause 52: 'If anyone shall have been disseized by us, or removed, without a legal sentence of his peers, from his lands, castles, liberties or lawful right, we shall straightway restore them to him. And if a dispute shall arise concerning this matter it shall be settled according to the judgment of the twenty-five barons who are mentioned below as sureties for the peace'.

¹³⁸ See e.g. Archbold, 15th edn, 1862; Harris, *Principles of Criminal Law* (7th edn, London: 1896).

¹³⁹ See para 3, Practice Direction (Crime: Voluntary Bills of Indictment) 1999 2 Crim.App.R. 442. For non-indictable offences, see also section 29 of the Criminal Justice Act 2003, allowing the CPS to issue written charges without the prerequisite of arrest (although the provision is not yet in force throughout the UK).

when many are keen to borrow from the experience of such continental legal systems as France and Spain,¹⁴⁰ to point out that one of the key features of terrorism prosecutions in US which eliminates the need for pre-charge detention is a centuries-old mechanism of the common law.

¹⁴⁰ See e.g. Home Office, *Terrorism investigations and the French examining magistrates system* (July 2007), p2: 'The examining magistrate system is sometimes presented as a possible alternative model for the investigation and prosecution of terrorist suspects in the UK because of the difficulty in terrorism cases of introducing intelligence material as evidence in court'.

Table: Dates of arrest and charge of suspects

<i>Name of suspect</i>	<i>Alleged plot</i>	<i>Arrested</i>	<i>Charged</i>	<i><u>Precharge</u>^a</i>	<i>Outcome of trial</i>
Jeffrey Leon Battle	Portland cell ^b	4/10/2002	4/10/2002	1 day	Convicted, 18 yrs
Ahmed Ibrahim Bilal	Portland cell	10/10/2002 ^c	4/10/2002	1 day	Pleaded guilty, 10 yrs
Muhammad Ibrahim Bilal	Portland cell	4/10/2002	4/10/2002	1 day	Pleaded guilty, 8 yrs
Patrice Lumumba Ford	Portland cell	4/10/2002	4/10/2002	1 day	Convicted, 18 yrs
Maher Hawash	Portland cell	3/3/2003 ^d	3/3/2003	1 day	Pleaded guilty, 7 yrs
October Lewis	Portland cell	4/10/2002	4/10/2002	1 day	Pleaded guilty, 3 yrs
Mukhtar Al Bakri	Lackawanna Six	15/9/2002 ^e	17/9/2002	2 days	Pleaded guilty, 10 yrs
Sahim Alwan	Lackawanna Six	13/9/2002	14/9/2002	1 day	Pleaded guilty, 9½ yrs
Faysal Galab	Lackawanna Six	13/9/2002	14/9/2002	1 day	Pleaded guilty, 7 yrs
Yahya Goba	Lackawanna Six	13/9/2002	14/9/2002	1 day	Pleaded guilty, 10 yrs
Shafal Mosed	Lackawanna Six	13/9/2002	14/9/2002	1 day	Pleaded guilty, 8 yrs
Yaseinn Taher	Lackawanna Six	13/9/2002	14/9/2002	1 day	Pleaded guilty, 8 yrs
Mohammed Aatique	Va. jihad network	27/6/2003	27/6/2003	1 day	Pleaded guilty, 10½ yrs
Hammad Abdur Raheem	Va. jihad network	27/6/2003	27/6/2003	1 day	Pleaded guilty, 52 mths
Caliph Abdur Raheem	Va. jihad network	27/6/2003	27/6/2003	1 day	Acquitted
Ibrahim Ahmed Al Hamdi	Va. jihad network	n/a ^f	27/6/2003	0 days ^g	Pleaded guilty, 15 yrs
Ali Al Timini	Va. jihad network	n/a ^h	23/9/2004	0 days ⁱ	Convicted, life sentence
Sabri Benkhala	Va. jihad network	18/7/2003	27/6/2003	1 day	Acquitted
Ali Asad Chandia	Va. jihad network	15/09/2003	16/09/2003	1 day	Convicted, 15 yrs
Seifullah Chapman	Va. jihad network	18/7/2003	27/6/2003	1 day	Convicted, 65 yrs
Khwaja Mahmood Hasan	Va. jihad network	18/7/2003	27/6/2003	1 day	Pleaded guilty, 37 mths
Masoud Ahmad Khan	Va. jihad network	27/6/2003	27/6/2003	1 day	Convicted, life + 45 yrs
Yong Ki Kwon	Va. jihad network	n/a ^j	27/6/2003	0 days ^k	Pleaded guilty, 38 mths
Randall Todd Royer	Va. jihad network	27/6/2003	27/6/2003	1 day	Pleaded guilty, 20 yrs
Donald Thomas Surratt	Va. jihad network	27/6/2003	27/6/2003	1 day	Pleaded guilty, 46 mths
Iyman Faris	Brooklyn Bridge	n/a ^l	17/3/2003 ^m	0 days ⁿ	Pleaded guilty, 20 yrs
Nuradin Abdi	Columbus mall	n/a ^o	10/6/2004	0 days ^p	Pleaded guilty, 10 yrs
James Elshafay	NY subway plot	27/8/2004	28/8/2004	1 day	Pleaded guilty, 5 yrs
Shahawar Matin Siraj	NY subway plot	27/8/2004	28/8/2004	1 day	Convicted, 30 yrs

Marwan Othman El-Hindi	Toledo plot	19/2/2006	21/2/2006	2 days	Awaiting trial
Zand Wassim Mazloun	Toledo plot	19/2/2006	21/2/2006	2 days	Awaiting trial
Mohammad Zaki Amawi	Toledo plot	19/2/2006 ^g	21/2/2006	2 days	Awaiting trial
Khaleel Ahmed	Toledo plot	21/2/2007	21/2/2007	1 day	Awaiting trial
Zubair Ahmed	Toledo plot	21/2/2007	21/2/2007	1 day	Awaiting trial
Patrick Abraham	Sears Tower plot	n/a ^f	23/6/2006	0 days	Awaiting trial
Burson Augustin	Sears Tower plot	22/6/2006	23/6/2006	1 day	Awaiting trial
Rothschild Augustin	Sears Tower plot	22/6/2006	23/6/2006	1 day	Awaiting trial
Narseal Batiste	Sears Tower plot	22/6/2006	23/6/2006	1 day	Awaiting trial
Naudimar Herrera	Sears Tower plot	22/6/2006	23/6/2006	1 day	Awaiting trial
Lyglenson Lemorin	Sears Tower plot	22/6/2006	23/6/2006	1 day	Awaiting trial
Stanley Grant Phanor	Sears Tower plot	n/a ^s	23/6/2006	0 days	Awaiting trial
Dritan Duka	Fort Dix plot	7/5/2007	8/5/2007	1 day	Awaiting trial
Eljvir Duka	Fort Dix plot	7/5/2007	8/5/2007	1 day	Awaiting trial
Shain Duka	Fort Dix plot	7/5/2007	8/5/2007	1 day	Awaiting trial
Serdar Tatar	Fort Dix plot	7/5/2007	8/5/2007	1 day	Awaiting trial
Mohamad Shnewer	Fort Dix plot	7/5/2007	8/5/2007	1 day	Awaiting trial
Agron Abdullahu	Fort Dix plot	7/5/2007	8/5/2007	1 day	Awaiting trial
Russell Defreitas	JKF Airport plot	1/6/2007	2/6/2007	1 day	Awaiting trial
Kareem Ibrahim	JKF Airport plot	2/6/2007 ^t	2/6/2007	0 days	Awaiting extradition
Abdul Kadir	JKF Airport plot	2/6/2007 ^u	2/6/2007	0 days	Awaiting extradition
Abdel Nur	JKF Airport plot	5/6/2007 ^v	2/6/2007	0 days	Awaiting extradition

^a In cases where indictments were issued prior to arrest, this records the amount of time between a suspect's arrest and first appearance in court.

^b Habis Abdulla Al Saoub was also indicted as a member of the Portland Cell but never arrested. He was later killed in Pakistan in October 2003.

^c Arrested in Malaysia where detained on immigration charges since January 2002.

^d Previously detained as a material witness since March 2003.

^e Arrested in Bahrain where detained by authorities on 11 September 2002.

^f Already in custody on firearms charges.

^g Already in custody on firearms charges.

^h Indicted without being arrested.

ⁱ Indicted without being arrested.

^j Already in custody on immigration charges.

^k Already in custody on immigration charges.

^l Agreed to turn informant for FBI.

^m Date of plea agreement.

ⁿ Agreed to turn informant for FBI.

^o Already in custody on immigration charges.

^p Already in custody on immigration charges.

^q Arrested in Jordan and flown back to US.

^r Already in custody on immigration charges.

^s Already in custody on a firearm charge.

^t Arrested in Trinidad.

^u Arrested in Trinidad.

^v Surrendered to authorities in Trinidad.